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Annotated

**2013
ADVANCE
CODE
SERVICE**

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Supplement.

Contains statutory changes made during
the 2012 Regular Session.

Prepared by the Editorial Staff
of the Publisher



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PREFACE

Use of Advance Code Service.

The 2013 Advance Code Service ensures that your Mississippi Code of 1972 Annotated is always as current as possible by providing Judicial Decision notes, Attorney General Opinions, Ethics Opinions, research references, and references to law review articles. The ACS may also include changes to statutory provisions, and editorial comments. It ships three times a year, in the period between annual Code supplement pamphlet shipments. Advance Code Service pamphlets are cumulative and may be discarded or recycled upon receipt of later pamphlets.

Format.

Material in the Advance Code Service follows the structure of the Mississippi Code of 1972 Annotated and should be used in conjunction with the Code and its 2012 Supplement.

Annotations.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and Court of Appeals. These cases will be printed in the following reporters:

- Southern Reporter, 3rd Series
- United States Supreme Court Reports
- Supreme Court Reporter
- United States Supreme Court Reports, Lawyers' Edition, 2nd Series
- Federal Reporter, 3rd Series
- Federal Supplement, 2nd Series
- Federal Rules Decisions
- Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

- American Law Reports, 6th Series
- American Law Reports, Federal Series
- Mississippi College Law Review
- Mississippi Law Journal

In addition, published opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

PREFACE

Information, suggestions, comments, and questions.

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LEXISNEXIS

THE CONSTITUTION OF THE UNITED STATES OF AMERICA

ARTICLE I

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- 2. Burden upon interstate commerce.
- 12. Taxation—In general.
- 18. — Miscellaneous taxes.

2. Burden upon interstate commerce.

Miss. Code Ann. § 27-70-5 (2010) violated the Commerce Clause, U.S. Const. art. I, § 8, cl. 3, as it was internally inconsistent since: (1) if another state enacted an identical law and a distributor obtained cigarettes in Mississippi for sale outside of Mississippi, then Mississippi would impose a fee on a transaction and the other state would impose a fee on a transaction; (2) if the cigarettes acquired by the Mississippi distributor were sold intrastate, they would be subject to only one fee; and (3) if another state enacted an identical statute, interstate commerce would bear a burden that intrastate commerce would not. *Commonwealth Brands*

v. Morgan, — So. 2d —, 2013 Miss. LEXIS 141 (Miss. Apr. 4, 2013).

12. Taxation—In general.

18. — Miscellaneous taxes.

Appellants were not entitled to attorney's fees under 42 U.S.C.S. § 1988, even though they correctly alleged that Miss. Code Ann. 27-70-5 (2010) violated the Commerce Clause, U.S. Const. art. I, § 8, cl. 3, as they had an adequate remedy, which they invoked, declaratory relief under Miss. R. Civ. P. 57; under the Tax Injunction Act, 28 U.S.C.S. § 1341, the constitutionality of a state tax could not be challenged under 42 U.S.C.S. § 1983 in state court if an adequate remedy was available under state law. *Commonwealth Brands v. Morgan*, — So. 2d —, 2013 Miss. LEXIS 141 (Miss. Apr. 4, 2013).

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AMENDMENT V

GRAND JURY INDICTMENT FOR CAPITAL CRIMES; DOUBLE JEOPARDY; SELF-INCRIMINATION;
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- 5. Double jeopardy — In general.
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- 9. —Same elements, double jeopardy.
- 17. Self-incrimination — In general.
- 21. —Witnesses, self-incrimination.
- 51. Due process — In general.

5. Double jeopardy — In general.

7. —Civil and criminal proceedings, double jeopardy.

Although defendant claimed that the court's decision to set his pleas aside and bring him to trial constituted a breach of the plea agreement on the State's behalf,

an abuse of discretion, and double jeopardy, the circuit court did not abuse its discretion by disregarding the original plea agreement and putting the case on the trial docket because defendant's guilty pleas were involuntary. There was no reason why defendant should not have been proceeded against as if no trial had previously taken place; therefore, defendant could not get his convictions set aside and then claim that he was protected from a new trial by the Double Jeopardy Clauses of the Mississippi and United States Constitutions, Miss. Const. art. 3, § 22 and U.S. Const. amend. V. *Catchings v. State*, — So. 2d —, 2013 Miss. App. LEXIS 146 (Miss. Ct. App. Apr. 2, 2013).

9. —Same elements, double jeopardy.

Defendant's right to protection against double jeopardy was not violated because he was subject to multiple punishments for possession with intent to distribute five separate controlled substances, because to obtain a verdict on each count, the State was required to prove beyond a reasonable doubt that each of the substances found in defendant's house was in fact a controlled substance under Miss. Code Ann. § 41-29-139 (Rev. 2009), and that defendant possessed and intended to sell each drug. *Watkins v. State*, 90 So. 3d 1283 (Miss. Aug. 16, 2012), modified by 2012 Miss. LEXIS 624 (Miss. Dec. 13, 2012).

17. Self-incrimination — In general.

21. —Witnesses, self-incrimination.

Although cross-examination of the victim of an armed robbery regarding his indictment on an aggravated assault charge might have caused the jury to disbelieve the victim's testimony against defendant, the trial court properly excluded the evidence because the victim had invoked his Fifth Amendment right against self-incrimination and defendant's Sixth Amendment rights had to yield to the victim's Fifth Amendment rights. *Renfro v. State*, — So. 2d —, 2013 Miss. LEXIS 150 (Miss. Apr. 11, 2013).

51. Due process — In general.

Petitioner was allowed to proceed with a motion for access to his experts for the purpose of evaluation, testing, and any other purpose reasonably believed by counsel to be necessary for the full litigation of his post-conviction claims. As a matter of due process, prisoners sentenced to death should be granted access to their experts so long as the access complied with corrections rules and regulations and so long as those rules and regulations did not violate their due process rights. *Grayson v. State*, — So. 2d —, 2013 Miss. LEXIS 163 (Miss. Apr. 18, 2013).

AMENDMENT VI

JURY TRIAL FOR CRIMES AND PROCEDURAL RIGHTS

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- 15. Speedy trial — In general.
- 19. —Tests, speedy trial.
- 22. — Delay attributable to defendant, speedy trial.
- 23. — Delay attributable to state, speedy trial.
- 34. — Prejudice to defendant, speedy trial.
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- 65. Confrontation of witnesses — In general.
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- 79. Compulsory process.
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- 121. — Post-conviction proceedings, assistance of counsel.

15. Speedy trial — In general.

19. —Tests, speedy trial.

Defendant's right to a speedy trial under the Sixth Amendment and Miss. Const. art. 3, § 26 was not violated because the prejudice was minimal since the fading memories of potential, unnamed

witnesses did not impair defense. *Ben v. State*, 95 So. 3d 1236 (Miss. Aug. 23, 2012), writ of certiorari denied by 2013 U.S. LEXIS 2589, 81 U.S.L.W. 3555 (U.S. Apr. 1, 2013).

22. — Delay attributable to defendant, speedy trial.

Defendant was not denied his Sixth Amendment right to a speedy trial because not a single Barker factor weighed in defendant's favor, and one, reason for the delay, weighed heavily against him; although the delay in bringing defendant to trial was more than three times the presumptively prejudicial eight-month mark, of the 833 total days between indictment and trial, 701 days were attributable to defendant. *Hardison v. State*, 94 So. 3d 1092 (Miss. 2012).

Defendant was not denied his Sixth Amendment right to a speedy trial because not a single Barker factor weighed in defendant's favor, and one, reason for the delay, weighed heavily against him; although the delay in bringing defendant to trial was more than three times the presumptively prejudicial eight-month mark, of the 833 total days between indictment and trial, 701 days were attributable to defendant. *Hardison v. State*, 94 So. 3d 1092 (Miss. 2012).

23. — Delay attributable to state, speedy trial.

Defendant's right to a speedy trial under the Sixth Amendment and Miss. Const. art. 3, § 26 was not violated because the bulk of the delay was due to the state crime lab's forensic and DNA testing, which was critical to the case. *Ben v. State*, 95 So. 3d 1236 (Miss. Aug. 23, 2012), writ of certiorari denied by 2013 U.S. LEXIS 2589, 81 U.S.L.W. 3555 (U.S. Apr. 1, 2013).

34. — Prejudice to defendant, speedy trial.

Defendant's convictions for aggravated assault and armed robbery were proper because his right to a speedy trial was not violated since the delay was neither intentional nor egregiously protracted, and there was an absence of actual prejudice to the defense. *Johnson v. State*, 68 So. 3d 1239 (Miss. June 30, 2011).

Defendant's right to a speedy trial under the Sixth Amendment and Miss. Const. Art. 3, § 26 was not violated because the prejudice was minimal since the fading memories of potential, unnamed witnesses did not impair defense. *Ben v. State*, 95 So. 3d 1236 (Miss. Aug. 23, 2012), writ of certiorari denied by 2013 U.S. LEXIS 2589, 81 U.S.L.W. 3555 (U.S. Apr. 1, 2013).

36. — Timely assertion of right, speedy trial.

Defendant's right to a speedy trial under the Sixth Amendment and Miss. Const. Art. 3, § 26 was not violated because despite the anxiety and hardship that defendant could have endured, he waited until two weeks before his initial trial date to assert his right to a speedy trial; although defendant's motion included a request for a speedy trial, the context and timing of the motion showed that he was actually seeking dismissal, not a trial. *Ben v. State*, 95 So. 3d 1236 (Miss. Aug. 23, 2012), writ of certiorari denied by 2013 U.S. LEXIS 2589, 81 U.S.L.W. 3555 (U.S. Apr. 1, 2013).

65. Confrontation of witnesses — In general.

72. — Hearsay, confrontation of witnesses.

Purported statements of unidentified persons at the company that manufactured the bullets involved in a crime constituted hearsay, and because it was unclear who contacted the company, perhaps double hearsay, and its admission resulted in a violation of the Confrontation Clause. *Burdette v. State*, — So. 2d —, 2013 Miss. LEXIS 75 (Miss. Mar. 28, 2013).

76. — Test results, confrontation of witnesses.

Admission of a crime lab report was error because the surrogate testimony that was used to enter the report into evidence was presented by a police officer with no apparent relation to the Mississippi Crime Laboratory or to the report, and the analysts were not found to be unavailable, and defendant had no prior opportunity for cross-examination; the admission of the document without live tes-

timony from an individual involved in the analysis constituted a violation of the Confrontation Clause. *Burdette v. State*, — So. 2d —, 2013 Miss. LEXIS 75 (Miss. Mar. 28, 2013).

While an analyst's supervisor was not involved in the testing of a substance that proved to be cocaine, as he was sufficiently involved with the analysis and had intimate knowledge about it and the report prepared by the analyst, his testimony did not violate defendant's right of confrontation under U.S. Const. amend. VI. *Jenkins v. State*, 102 So. 3d 1063 (Miss. 2012).

In the context of the defendant's rights to confrontation, a supervisor, reviewer, or other analyst involved may testify in place of the primary analyst where that person was actively involved in the production of the report and had intimate knowledge of analyses even though he or she did not perform the scientific tests first hand. *Grim v. State*, 102 So. 3d 1073 (Miss. 2012).

Though a laboratory supervisor who testified that a substance was cocaine was not involved in the actual testing, he had reviewed the report for accuracy and signed it as the case technical reviewer, and was sufficiently involved with the analysis and overall process that his testimony did not violate defendant's right of confrontation under the Sixth Amendment, U.S. Const. amend. VI. *Grim v. State*, 102 So. 3d 1073 (Miss. 2012).

79. Compulsory process.

Although cross-examination of the victim of an armed robbery regarding his indictment on an aggravated assault charge might have caused the jury to disbelieve the victim's testimony against defendant, the trial court properly excluded the evidence because the victim

had invoked his Fifth Amendment right against self-incrimination and defendant's Sixth Amendment rights had to yield to the victim's Fifth Amendment rights. *Renfro v. State*, — So. 2d —, 2013 Miss. LEXIS 150 (Miss. Apr. 11, 2013).

80. Assistance of counsel — In general.

121. — Post-conviction proceedings, assistance of counsel.

Because there was no merit to petitioner's claims that trial and appellate counsel were ineffective, counsel's failure to raise the claims in the original postconviction relief proceedings did not prejudice petitioner. *Grayson v. State*, — So. 2d —, 2013 Miss. LEXIS 163 (Miss. Apr. 18, 2013).

Because the jury in a capital case was informed adequately that a life sentence would be without parole, counsel's failure to raise this claim in the original postconviction relief proceedings did not prejudice petitioner. *Grayson v. State*, — So. 2d —, 2013 Miss. LEXIS 163 (Miss. Apr. 18, 2013).

Because the jury in a capital case was not unconstitutionally foreclosed by the jury instructions from considering all mitigating circumstances, counsel's failure to raise this claim in the original postconviction relief proceedings did not prejudice petitioner. *Grayson v. State*, — So. 2d —, 2013 Miss. LEXIS 163 (Miss. Apr. 18, 2013).

Because post-conviction relief (PCR) proceedings are a critical stage of the death-penalty appeal process at the state level, PCR petitioners who are under a sentence of death do have a right to the effective assistance of PCR counsel. *Grayson v. State*, — So. 2d —, 2013 Miss. LEXIS 163 (Miss. Apr. 18, 2013).

AMENDMENT XIV

CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION;
APPORTIONMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT;
ENFORCEMENT

JUDICIAL DECISIONS

77. Racial discrimination — In general.

81.5. — Race-neutral exercise of peremptory challenges, impartial jury.

77. Racial discrimination — In general.

81.5. — Race-neutral exercise of peremptory challenges, impartial jury.

If a prosecutor's distrust of a venire member is a race-neutral reason, then a defendant's distrust must be as well, and a trial court cannot deprive defendants of their right to a peremptory strike unless the trial judge properly conducts the analysis outlined in Batson; the Batson analysis has three steps, and it is imperative that a trial judge follow those steps accordingly, and when a trial judge erroneously denies a defendant a peremptory

strike by failing to conduct the proper Batson analysis, prejudice is automatically presumed, and a court will find reversible error. *Hardison v. State*, 94 So. 3d 1092 (Miss. 2012).

Trial could erroneously denied defendant a peremptory strike by holding that a juror's previous service on a jury in a criminal case was not a race-neutral reason for the strike because defendant's reason for the peremptory challenge, that the juror's responses about a prior jury experience indicated he could be pro-prosecution, qualified as race-neutral; the trial could never addressed the issue of pretext but simply held that the stated reason was not race-neutral, and the denial of defendant's peremptory challenge without a proper Batson analysis constituted reversible error. *Hardison v. State*, 94 So. 3d 1092 (Miss. 2012).



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THE CONSTITUTION OF THE STATE OF MISSISSIPPI

Article 3. Bill of Rights
Article 12. Franchise

ADOPTED NOVEMBER 1, A.D., 1890

ARTICLE 3.

BILL OF RIGHTS.

SEC.

17A. Taking private property by eminent domain; transfer to others prohibited for ten years; exceptions.

§ 11. Peaceful assemblage; right to petition government.

RESEARCH REFERENCES

ALR. When Does Use of Pepper Spray, Mace, or Other Similar Chemical Irritants Constitute Violation of Constitutional Rights. 65 A.L.R.6th 93

§ 13. Freedom of speech and press; libel.

RESEARCH REFERENCES

ALR. When Does Use of Pepper Spray, Mace, or Other Similar Chemical Irritants Constitute Violation of Constitutional Rights. 65 A.L.R.6th 93.

Constitutionality of Restricting Public Speech in Street, Sidewalk, Park, or Other Public Forum — Characteristics of Forum. 70 A.L.R.6th 513.

Constitutionality of Restricting Public Speech in Street, Sidewalk, Park, or

Other Public Forum — Manner of Restriction. 71 A.L.R.6th 471.

Constitutional Challenges to Compelled Speech — General Principles. 72 A.L.R.6th 513.

Constitutional Challenges to Compelled Speech — Particular Situations or Circumstances. 73 A.L.R.6th 281.

§ 14. Due process.

RESEARCH REFERENCES

ALR. Class-of-One Equal Protection Claims Based Upon Real Estate Development, Zoning, and Planning. 68 A.L.R.6th 389.

§ 17A. Taking private property by eminent domain; transfer to others prohibited for ten years; exceptions.

No property acquired by the exercise of the power of eminent domain under the laws of the State of Mississippi shall, for a period of ten years after its acquisition, be transferred or any interest therein transferred to any

person, non-governmental entity, public-private partnership, corporation, or other business entity with the following exceptions:

(1) The above provisions shall not apply to drainage and levee facilities and usage, roads and bridges for public conveyance, flood control projects with a levee component, seawalls, dams, toll roads, public airports, public ports, public harbors, public wayports, common carriers or facilities for public utilities and other entities used in the generation, transmission, storage or distribution of telephone, telecommunication, gas, carbon dioxide, electricity, water, sewer, natural gas, liquid hydrocarbons or other utility products.

(2) The above provisions shall not apply where the use of eminent domain (a) removes a public nuisance; (b) removes a structure that is beyond repair or unfit for human habitation or use; (c) is used to acquire abandoned property; or (d) eliminates a direct threat to public health or safety caused by the property in its current condition.

Editor's Note — During the November 8, 2011, election, a citizen-initiated Constitutional amendment, Initiative # 31 - Eminent Domain, was approved by a majority of the electors of Mississippi. The Governor, by Executive Order No. 1074, dated January 9, 2012, directed the Secretary of State to insert Initiative # 31 in the Mississippi Constitution as Article 3, § 17A.

Article 15, § 273(10) of the Mississippi Constitution provides that initiatives approved by the electors take effect thirty (30) days from the date of the official declaration of the vote by the Secretary of State. The Secretary of State certified the November 8, 2011, election on December 8, 2011.

Executive Order No. 1074, signed by Governor Haley Barbour on January 9, 2012, provides:

"To the Secretary of State

"State of Mississippi:

"WHEREAS, Three (3) Constitutional Initiatives proposed Amendments to the Mississippi Constitution and met the requirements of the Mississippi Constitution and the laws of this State to be placed on the November 8, 2011 ballot, as follows: Initiative # 26 - Definition of "Person"; Initiative # 27 - Voter Identification; and Initiative # 31 - Eminent Domain; and

"WHEREAS, The Constitution requires that the Initiatives "receive a majority of the votes thereon and not less than forty percent (40%) of the total votes cast at the election at which the measure was submitted to be approved." Miss. Const. Art. 15, § 273(7).

"WHEREAS, Initiative # 27 and Initiative # 31 were approved by the electors of Mississippi in accordance with Miss. Const. Art. 15, § 273(7); and

"WHEREAS, Art. 15, § 273 further provides that initiatives approved by the electors take effect thirty (30) days from the date of the official declaration of the vote by the Secretary of State. Miss. Const. Art. 15, § 273(10). The Secretary of State certified the November 8, 2011, election results on December 8, 2011; and

"WHEREAS, Unlike Initiative # 26, which failed to pass the electorate, Initiative # 27 and Initiative # 31 were both silent as to where the proposed Amendments to the Mississippi Constitution would be placed; furthermore, the Mississippi Constitution, as well as statutory law, is silent as to who has the administrative and/or ministerial authority to insert the initiatives of the people of Mississippi, passed by the electorate, as part of the Constitution; and

"WHEREAS, Article 5, § 123 of the Mississippi Constitution grants the Governor of the State of Mississippi the authority to "see that the laws are faithfully executed"; and

"WHEREAS, Section 7-1-5 of the Mississippi Code Annotated sets forth the powers of the Governor of the State of Mississippi, including, but not limited to, serving as the

supreme executive officer of the State, seeing that the laws are faithfully executed, and supervising the official conduct of executive and ministerial officers; and

“WHEREAS, in the absence of constitutional and/or statutory provision providing otherwise, the Governor has the authority to provide direction for carrying out all lawful administrative and ministerial functions of state government; and

“NOW, THEREFORE, I, Haley Barbour, Governor of the State of Mississippi, under, and by virtue of the authority vested in me by the Constitution and Laws of this State, do hereby direct the Secretary of State C. Delbert Hosemann, Jr., as follows:

“To insert Initiative # 31 in the Mississippi Constitution as Art. 3, § 17A, to follow Art. 3, § 17, where the constitutional requirements for the taking of property for public use are located;

“To insert Initiative # 27 in the Mississippi Constitution as Art. 12, § 249A, to follow Art. 12, § 249, where the constitutional requirements to vote in the State of Mississippi are located;

“I do authorize and direct you, upon receipt of this Executive Order, to take notice and be governed accordingly.

“IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Mississippi to be affixed.

“DONE at the Capitol, in the City of Jackson, this the 9th day of January, in the year of our Lord two thousand and twelve, and of the two hundred and thirty-sixth year of the United States of America.”

§ 22. Double jeopardy.

JUDICIAL DECISIONS

2. When jeopardy attaches—In general.
7. — — Plea agreements, when jeopardy attaches.
21. Different elements, no double jeopardy.

2. When jeopardy attaches—In general.

7. — — Plea agreements, when jeopardy attaches.

Although defendant claimed that the court's decision to set his pleas aside and bring him to trial constituted a breach of the plea agreement on the State's behalf, an abuse of discretion, and double jeopardy, the circuit court did not abuse its discretion by disregarding the original plea agreement and putting the case on the trial docket because defendant's guilty pleas were involuntary. There was no reason why defendant should not have been proceeded against as if no trial had previously taken place; therefore, defendant could not get his convictions set aside and then claim that he was protected from a new trial by the Double Jeopardy Clauses of the Mississippi and United States Constitutions, Miss. Const. art. 3, § 22 and

U.S. Const. amend. V. *Catchings v. State*, — So. 2d —, 2013 Miss. App. LEXIS 146 (Miss. Ct. App. Apr. 2, 2013).

21. Different elements, no double jeopardy.

Defendant's right against double-jeopardy was not violated because, while the counts for fondling, under Miss. Code Ann. § 97-5-23(1), and the attempted-sexual-battery, under Miss. Code Ann. § 97-1-7, stemmed from the same encounter, the elements of the crimes were not the same as each count contained an element not contained in the other. Attempted sexual battery did not contain the element of gratification of lust, while fondling did not require the element of penetration. *Moore v. State*, — So. 2d —, 2013 Miss. App. LEXIS 207 (Miss. Ct. App. Apr. 23, 2013).

As a conviction of possession of a firearm by a convicted felon (Miss. Code Ann. § 97-37-5) required proof of a prior felony, while conviction of carrying a concealed weapon (Miss. Code Ann. § 97-37-1) required proof that the weapon be concealed, each offense had an element not present in the other; therefore, defen-

dant's conviction of both charges did not violate the double jeopardy ban. *Wilson v.*

State, 95 So. 3d 1282 (Miss. Ct. App. 2012).

§ 23. Searches and seizures.

JUDICIAL DECISIONS

2. Searches and seizures —In general.
2.5. — Excessive force, searches and seizures.

4. — Stops and detentions, searches and seizures.

2. Searches and seizures —In general.

2.5. — Excessive force, searches and seizures.

4. — Stops and detentions, searches and seizures.

Defendant was legally stopped under the Fourth Amendment, U.S. Const. amend. IV, and Miss. Const. art. III, § 23 as: (1) he failed to use his turn signal and violated Miss. Code Ann. § 63-3-707, even though there was no imminent threat of a

collision between his vehicle and an officer's vehicle that was traveling at a safe distance behind defendant's vehicle; (2) the subsequent searches of defendant and his vehicle were lawful; (3) defendant was arrested for driving with a suspended license; (4) the glass pipes were found in a search incident to defendant's arrest; and (5) the inventory search of defendant's vehicle, during which the methamphetamine was discovered, was conducted according to police department policy and was limited to the areas of the vehicle where defendant's property could reasonably be expected to be found.. *Melton v. State*, — So. 3d —, 2012 Miss. App. LEXIS 618 (Miss. Ct. App. Oct. 9, 2012).

RESEARCH REFERENCES

ALR. Search and Seizure: Reasonable Expectation of Privacy in Side Yards. 69 A.L.R.6th 275.

Adequacy of Defense Counsel's Representation of Criminal Client Regarding Search and Seizure Issues — Pretrial Motions — Suppression Motions Where No Warrant Involved. 71 A.L.R.6th 1.

Reverse-Franks Claims, Where Police Arguably Omit Facts from Search or Arrest Warrant Affidavit Material to Finding of Probable Cause with Reckless Disregard for the Truth — Underlying Sexual Offenses. 74 A.L.R.6th 69

Adequacy of Defense Counsel's Representation of Criminal Client Regarding Search and Seizure Issues — Pretrial Motions — Motions Other than for Suppression. 73 A.L.R.6th 1.

Reverse-Franks Claims, Where Police Arguably Omit Facts from Search or Ar-

rest Warrant Affidavit Material to Finding of Probable Cause with Reckless Disregard for Truth — Underlying Drug Offenses. 73 A.L.R.6th 49.

Search and Seizure: Reasonable Expectation of Privacy in Outbuildings. 67 A.L.R.6th 437.

Adequacy of Defense Counsel's Representation of Criminal Client Regarding Search and Seizure Issues — Pretrial Motions — Suppression Motions Where Warrant Was Involved. 72 A.L.R.6th 1.

Reverse-Franks Claims, Where Police Arguably Omit Facts from Search or Arrest Warrant Affidavit Material to Finding of Probable Cause with Reckless Disregard for the Truth — Underlying Homicide and Assault Offenses. 72 A.L.R.6th 437.

§ 26. Rights of accused; state grand jury proceedings.

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4. Self-incrimination — In general.
18. — — Interrogation after counsel requested, self-incrimination.
39. Speedy trial — In general.
43. — — Invocation of right, speedy trial.
44. — — Factors considered, speedy trial.
46. — — Delay attributable primarily to defendant, speedy trial.
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89. Nature and cause of accusation — In general.
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125. Right to counsel — In general.
140. — — Post-conviction proceedings, right to counsel.
142. Ineffectiveness of counsel — In general.
144. — — Factors considered, ineffectiveness of counsel.
145. — — Trial strategy, ineffectiveness of counsel.

3. Venue of trial.

Where a child testified that defendant sodomized him while they were in a chicken house in Lena, Mississippi, which the boy believed was in Scott County, as Lena was in fact in Leake County, and the jury was never instructed that it had to find beyond a reasonable doubt that the crime had occurred in Scott County—an essential element of the offense—defendant's conviction of fondling the child was reversed. *Rogers v. State*, 95 So. 3d 623 (Miss. Aug. 16, 2012).

4. Self-incrimination — In general.

18. — — Interrogation after counsel requested, self-incrimination.

Trial court did not abuse its discretion in finding no *Miranda* violation and in failing to suppress an audio recording of defendant's interview with law enforcement because defendant's waiver of *Miranda* rights was voluntary, and defendant's continuing to speak without the presence of a requested attorney was also voluntary. *Jones v. State*, — So. 2d —, 2013 Miss. App. LEXIS 199 (Miss. Ct. App. Apr. 23, 2013).

39. Speedy trial — In general.

43. — — Invocation of right, speedy trial.

Defendant's right to a speedy trial under the Sixth Amendment and Miss. Const. Art. 3, § 26 was not violated because despite the anxiety and hardship that defendant could have endured, he waited until two weeks before his initial trial date to assert his right to a speedy trial; although defendant's motion included a request for a speedy trial, the context and timing of the motion showed that he was actually seeking dismissal, not a trial. *Ben v. State*, 95 So. 3d 1236 (Miss. Aug. 23, 2012), writ of certiorari denied by 2013 U.S. LEXIS 2589, 81 U.S.L.W. 3555 (U.S. Apr. 1, 2013).

44. — — Factors considered, speedy trial.

Defendant's convictions for aggravated assault and armed robbery were proper because his right to a speedy trial was not violated since the delay was neither intentional nor egregiously protracted, and there was an absence of actual prejudice to the defense. *Johnson v. State*, 68 So. 3d 1239 (Miss. June 30, 2011).

46. — — Delay attributable primarily to defendant, speedy trial.

Defendant's right to a speedy trial under the Sixth Amendment and Miss. Const. Art. 3, § 26 was not violated be-

cause the bulk of the delay was due to the state crime lab's forensic and DNA testing, which was critical to the case, and the prejudice was minimal since the fading memories of potential, unnamed witnesses did not impair defense; despite the anxiety and hardship that defendant could have endured, he waited until two weeks before his initial trial date to assert his right to a speedy trial. *Ben v. State*, 95 So. 3d 1236 (Miss. Aug. 23, 2012), writ of certiorari denied by 2013 U.S. LEXIS 2589, 81 U.S.L.W. 3555 (U.S. Apr. 1, 2013).

53. — — Guilty plea, speedy trial.

Defendant was procedurally barred from raising the argument that defendant was denied the right to a speedy trial because, at the plea hearing, the circuit judge informed defendant that defendant was waiving the right to a speedy and public trial, and defendant indicated that defendant understood. Furthermore, defendant signed three orders resetting the cause for trial, and each order stated that defendant waived the right to a speedy trial. *Avery v. State*, 95 So. 3d 765 (Miss. Ct. App. Aug. 14, 2012), writ of certiorari denied by 2013 Miss. LEXIS 122 (Miss. Mar. 7, 2013).

59. Fair trial — In general.

66. — — Conduct of trial, fair trial.

Defendant was not denied a fair trial by the trial judge initially leaving defendant in restraints and then removing the restraints because there was no evidence that defendant was prejudiced by temporarily appearing before the jury in restraints, especially in light of the judge's instructions to the jury that the restraints were immaterial to the charges before them. *Jones v. State*, — So. 2d —, 2013 Miss. App. LEXIS 199 (Miss. Ct. App. Apr. 23, 2013).

89. Nature and cause of accusation — In general.

91. — — Purpose, nature and cause of accusation.

Constructive criminal contempt judgments against a process server, a notary, and the owner of a process service company (accuseds) were vacated as a chan-

cellor violated the accuseds' due process rights under Miss. Const. art. III, § 26 since he failed to recuse himself after initiating the proceedings, and failed to issue summonses notifying the accuseds of the criminal nature of the charges against them under Miss. R. Civ. P. 81(d). *In re McDonald*, 98 So. 3d 1040 (Miss. Oct. 4, 2012).

105. Right to be present at trial—In general.

107. — — Waiver, right to be present at trial.

Defendant's constitutional right to confront his accusers and be present and sentencing were not violated when defendant was convicted and sentenced in absence of felony third-offense domestic violence, Miss. Code Ann. § 97-3-7(3), because defendant voluntarily waived his sentence at trial and sentencing, pursuant to Miss. Code Ann. § 99-17-9, by willfully failing to attend; defendant spoke with his attorney the morning of trial and indicated he was attending but defendant never showed up. *Robinson v. State*, 66 So. 3d 198 (Miss. Ct. App. June 28, 2011).

108. Confrontation of witnesses — In general.

Because the constitutional errors did not prejudice the outcome of the trial, there was no manifest miscarriage of justice and no reversible error. *Burdette v. State*, — So. 2d —, 2013 Miss. LEXIS 75 (Miss. Mar. 28, 2013).

117. — — Test results and testing equipment, confrontation of witnesses.

Admission of a crime lab report was error because the surrogate testimony that was used to enter the report into evidence was presented by a police officer with no apparent relation to the Mississippi Crime Laboratory or to the report, and the analysts were not found to be unavailable, and defendant had no prior opportunity for cross-examination; the admission of the document without live testimony from an individual involved in the analysis constituted a violation of the Confrontation Clause. *Burdette v. State*, — So. 2d —, 2013 Miss. LEXIS 75 (Miss. Mar. 28, 2013).

122. — — Hearsay evidence, confrontation of witnesses.

Purported statements of unidentified persons at the company that manufactured the bullets involved in a crime constituted hearsay, and because it was unclear who contacted the company, perhaps double hearsay, and its admission resulted in a violation of the Confrontation Clause. *Burdette v. State*, — So. 2d —, 2013 Miss. LEXIS 75 (Miss. Mar. 28, 2013).

125. Right to counsel — In general.

Trial court did not deny a father due process by allowing him to proceed pro se at a hearing to determine the amount of his child support arrearage, because 1) after the father's attorney had moved to withdraw, the father had 10 months to secure new counsel before the hearing, but neither did so nor requested a continuance; and 2) the trial court did not address contempt at the hearing. *Reasor v. Jordan*, — So. 2d —, 2013 Miss. LEXIS 144 (Miss. Apr. 4, 2013).

140. — — Post-conviction proceedings, right to counsel.

Defendant's motion to dismiss his appellate counsel was granted, as the trial judge informed him of his constitutional rights and the perils of self-representation, and he stated unequivocally that he desired to act as his own attorney. *Grim v. State*, 102 So. 3d 1073 (Miss. 2012).

142. Ineffectiveness of counsel — In general.**144. — — Factors considered, ineffectiveness of counsel.**

Defendant's claim of ineffective assistance of counsel was without merit because counsel had the authority to represent defendant in all matters before the court, including the filing of motions for continuance; when the attorney signed the documents that defendant alleged were forged, the attorney clearly noted that the attorney was signing as counsel on defendant's behalf; and sufficient pre-trial discovery and investigation were conducted. *Avery v. State*, 95 So. 3d 765 (Miss. Ct. App. Aug. 14, 2012), writ of certiorari denied by 2013 Miss. LEXIS 122 (Miss. Mar. 7, 2013).

145. — — Trial strategy, ineffectiveness of counsel.

Defendant's allegation of ineffective assistance of counsel was without foundation because (1) defendant's grounds concerned trial strategy, which was within counsel's discretion, and counsel's choices were not unreasonable and were sound trial strategy that could only have helped defendant; and (2) defendant failed to demonstrate how any of defendant's grounds for defendant's ineffective assistance of counsel claim had a prejudicial effect. Thus, defendant failed to show that defendant was denied a fair trial. *Pittman v. State*, — So. 2d —, 2013 Miss. App. LEXIS 153 (Miss. Ct. App. Apr. 4, 2013).

RESEARCH REFERENCES

ALR. When Does Use of Pepper Spray, Mace, or Other Similar Chemical Irritants Constitute Violation of Constitutional Rights. 65 A.L.R.6th 93.

What Constitutes 'Custodial Interrogation' Within Rule of Requiring that Suspect Be Informed of His or Her Federal Constitutional Rights Before Custodial Interrogation — At Border or Functional Equivalent of Border. 68 A.L.R.6th 607.

Adequacy of Defense Counsel's Representation of Criminal Client Regarding Search and Seizure Issues — Pretrial Motions — Suppression Motions Where No Warrant Involved. 71 A.L.R.6th 1.

Reverse-Franks Claims, Where Police Arguably Omit Facts from Search or Arrest Warrant Affidavit Material to Finding of Probable Cause with Reckless Disregard for the Truth — Underlying Sexual Offenses. 74 A.L.R.6th 69

Criminal Defendant's Right to Electronic Recordation of Interrogations and Confessions. 69 A.L.R.6th 579.

Reverse-Franks Claims, Where Police Arguably Omit Facts from Search or Arrest Warrant Affidavit Material to Finding of Probable Cause with Reckless Disregard for Truth — Underlying Drug Offenses. 73 A.L.R.6th 49.

§ 28. Cruel or unusual punishment prohibited.

RESEARCH REFERENCES

ALR. Prison Inmate's Eighth Amendment Rights to Treatment for Sleep Disorders. 68 A.L.R.6th 389.

ARTICLE 6.

JUDICIARY.

§ 145. Composition of Supreme Court.

JUDICIAL DECISIONS

2. Residency requirement for judges of the Court of Appeals.

As a candidate for judge of the Mississippi Court of Appeals must have the same qualifications as a justice of the Mississippi Supreme Court, and as the Mississippi Constitution imposes a resi-

dency requirement to run for the office of supreme court justice, a candidate for judge of the court of appeals must reside within the district for the office she seeks. Bryant v. Westbrooks, 99 So. 3d 128 (Miss. Sept. 25, 2012).

§ 165. Disqualification of judges.

JUDICIAL DECISIONS

2. Grounds of disqualification—In general.

5. — — Prior knowledge or experience, grounds for disqualification.

2. Grounds of disqualification—In general.

5. — — Prior knowledge or experience, grounds for disqualification.

Trial judge abused his discretion in declining to recuse himself in a prosecution for aggravated assault and forcible rape of child, since he had served as county pros-

ecuting attorney in an earlier youth-court shelter hearing regarding the child's custody as a result of the events giving rise to the criminal charges, and 1) the threshold issue in that hearing was whether the complainant was an "abused child" under Miss. Code Ann. § 43-21-105(m), which went to the heart of the issue of defendant's guilt; 2) the judge might have personal knowledge of disputed evidentiary facts concerning the criminal case due to his participation in the youth-court shelter hearing. Miller v. State, 94 So. 3d 1120 (Miss. 2012).

ARTICLE 12.

FRANCHISE.

SEC.

249A. Government issued photo identification required to vote.

§ 249A. Government issued photo identification required to vote.

(1)(a) Except as provided in subsection (2), A qualified elector who votes in a primary or general election, either in person at the polls or in person in the office of the circuit clerk, shall present a government issued photo identification before being allowed to vote.

(b) A qualified elector who does not have a government issued photo identification and who cannot afford such identification may obtain a state issued photo identification free of charge from the Mississippi Department of Public Safety. The elector must show appropriate identifying documents required by the Mississippi Department of Public Safety as provided by law.

(2)(a) An elector living and voting in a state-licensed care facility shall not be required to show a government issued photo identification before being allowed to vote.

(b) An elector who has a religious objection to being photographed will be allowed to cast an affidavit ballot, and the elector, within five days after the election, shall execute an affidavit in the appropriate circuit clerk's office affirming that the exemption applies.

(c) An elector who has a government issued photo identification, but is unable to present that identification when voting, shall file an affidavit ballot, and the elector, within five days after the election, shall present the government issued photo identification to the appropriate circuit clerk.

(3) This provision shall not be construed to require photo identification to register to vote. This provision only requires government issued photo identification for casting a ballot.

(4) The Legislature shall enact legislation to implement the provisions of this section of the constitution.

Editor's Note — During the November 8, 2011, election, a citizen-initiated Constitutional amendment, Initiative # 27 - Voter Identification, was approved by a majority of the electors of Mississippi. The Governor, by Executive Order No. 1074, dated January 9, 2012, directed the Secretary of State to insert Initiative # 27 in the Mississippi Constitution as Article 12, § 249A.

Article 15, § 273(10) of the Mississippi Constitution provides that initiatives approved by the electors take effect thirty (30) days from the date of the official declaration of the vote by the Secretary of State. The Secretary of State certified the November 8, 2011, election on December 8, 2011.

The addition of this new section to the Mississippi Constitution is subject to preclearance requirements of Section 5 of the Voting Rights Act of 1965, as amended and extended. Supplemental information was requested and is currently under review by the Department of Justice. As of May 15, 2013, preclearance had not been received.

Executive Order No. 1074, signed by Governor Haley Barbour on January 9, 2012, provides:

"To the Secretary of State

"State of Mississippi:

"WHEREAS, Three (3) Constitutional Initiatives proposed Amendments to the Mississippi Constitution and met the requirements of the Mississippi Constitution and the laws of this State to be placed on the November 8, 2011 ballot, as follows: Initiative

26 - Definition of "Person"; Initiative # 27 - Voter Identification; and Initiative # 31 - Eminent Domain; and

"WHEREAS, The Constitution requires that the Initiatives "receive a majority of the votes thereon and not less than forty percent (40%) of the total votes cast at the election at which the measure was submitted to be approved." Miss. Const. Art. 15, § 273(7).

"WHEREAS, Initiative # 27 and Initiative # 31 were approved by the electors of Mississippi in accordance with Miss. Const. Art. 15, § 273(7); and

"WHEREAS, Art. 15, § 273 further provides that initiatives approved by the electors take effect thirty (30) days from the date of the official declaration of the vote by the Secretary of State. Miss. Const. Art. 15, § 273(10). The Secretary of State certified the November 8, 2011, election results on December 8, 2011; and

"WHEREAS, Unlike Initiative # 26, which failed to pass the electorate, Initiative # 27 and Initiative # 31 were both silent as to where the proposed Amendments to the Mississippi Constitution would be placed; furthermore, the Mississippi Constitution, as well as statutory law, is silent as to who has the administrative and/or ministerial authority to insert the initiatives of the people of Mississippi, passed by the electorate, as part of the Constitution; and

"WHEREAS, Article 5, § 123 of the Mississippi Constitution grants the Governor of the State of Mississippi the authority to "see that the laws are faithfully executed"; and

"WHEREAS, Section 7-1-5 of the Mississippi Code Annotated sets forth the powers of the Governor of the State of Mississippi, including, but not limited to, serving as the supreme executive officer of the State, seeing that the laws are faithfully executed, and supervising the official conduct of executive and ministerial officers; and

"WHEREAS, in the absence of constitutional and/or statutory provision providing otherwise, the Governor has the authority to provide direction for carrying out all lawful administrative and ministerial functions of state government; and

"NOW, THEREFORE, I, Haley Barbour, Governor of the State of Mississippi, under, and by virtue of the authority vested in me by the Constitution and Laws of this State, do hereby direct the Secretary of State C. Delbert Hosemann, Jr., as follows:

"To insert Initiative # 31 in the Mississippi Constitution as Art. 3, § 17A, to follow Art. 3, § 17, where the constitutional requirements for the taking of property for public use are located;

"To insert Initiative # 27 in the Mississippi Constitution as Art. 12, § 249A, to follow Art. 12, § 249, where the constitutional requirements to vote in the State of Mississippi are located;

"I do authorize and direct you, upon receipt of this Executive Order, to take notice and be governed accordingly.

"IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Mississippi to be affixed.

"DONE at the Capitol, in the City of Jackson, this the 9th day of January, in the year of our Lord two thousand and twelve, and of the two hundred and thirty-sixth year of the United States of America."

TITLE 1

LAWS AND STATUTES

CHAPTER 3

Construction of Statutes

§ 1-3-4. Capital case, capital offense, capital crime, and capital murder.

JUDICIAL DECISIONS

5. Capital offense.

Miss. Code Ann. § 97-3-21 was not unconstitutionally vague and did not apply to the inmate where the inmate confused parole with conditional release as: (1) Miss. Code Ann. § 47-7-3(1)(f) prohibited parole for an inmate sentenced to life under Miss. Code Ann. § 99-19-101 for capital offenses; (2) since the inmate pled

guilty to murder, carrying a life sentence, he was convicted of a capital offense as defined in Miss. Code Ann. § 1-3-4; and (3) the inmate was eligible to petition for conditional release at age 65 under Miss. Code Ann. § 47-5-139(1)(a). *Higginbotham v. State*, — So. 3d —, 2012 Miss. App. LEXIS 595 (Miss. Ct. App. Sept. 25, 2012).

TITLE 9

COURTS

Chapter 21. Administrative Office of Courts	9-21-1
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CHAPTER 1

Provisions Common to Courts

GENERAL PROVISIONS

§ 9-1-11. Judge not to sit when interested or related.

JUDICIAL DECISIONS

6. Prior interest in cause as counsel.

Trial judge abused his discretion in declining to recuse himself in a prosecution for aggravated assault and forcible rape of child, since he had served as county prosecuting attorney in an earlier youth-court shelter hearing regarding the child's custody as a result of the events giving rise to the criminal charges, and 1) the threshold issue in that hearing was whether the

complainant was an "abused child" under Miss. Code Ann. § 43-21-105(m), which went to the heart of the issue of defendant's guilt; 2) the judge might have personal knowledge of disputed evidentiary facts concerning the criminal case due to his participation in the youth-court shelter hearing. *Miller v. State*, 94 So. 3d 1120 (Miss. 2012).

CHAPTER 3

Supreme Court

GENERAL PROVISIONS

§ 9-3-9. Jurisdiction of the court.

JUDICIAL DECISIONS

23. Requirement of final judgment or order.

27. —Other particular rulings or orders.

23. Requirement of final judgment or order.

27. —Other particular rulings or orders.

Chancellor's order that found father in contempt for failing to pay child support

but did not determine the amount of the arrearage or the amount of future child support the father would be obligated to pay was not a final order and could not be considered on appeal. *Raven v. Boyd*, — So. 2d —, 2013 Miss. App. LEXIS 171 (Miss. Ct. App. Apr. 9, 2013).

CHAPTER 4

Court of Appeals of the State of Mississippi

§ 9-4-1. Establishment of Court of Appeals.

JUDICIAL DECISIONS

2. Residency requirement.

As a candidate for judge of the Mississippi Court of Appeals has to reside within the district for the office she seeks, and as appellee did not meet her burden to prove that she met the residency requirement, the trial court erred in finding that she was a qualified candidate for the position.

Bryant v. Westbrooks, 99 So. 3d 128 (Miss. Sept. 25, 2012).

Candidate for the office of Court of Appeals of the State of Mississippi must reside within the district for the office she seeks. Bryant v. Westbrooks, 99 So. 3d 128 (Miss. Sept. 25, 2012).

§ 9-4-5. Selection of judges of court; qualifications; terms of office; Court of Appeals Districts.

JUDICIAL DECISIONS

1. Residency requirement.

As a candidate for judge of the Mississippi Court of Appeals has to reside within the district for the office she seeks, and as appellee did not meet her burden to prove that she met the residency requirement, the trial court erred in finding that she was a qualified candidate for the position.

Bryant v. Westbrooks, 99 So. 3d 128 (Miss. Sept. 25, 2012).

Candidate for the office of Court of Appeals of the State of Mississippi must reside within the district for the office she seeks. Bryant v. Westbrooks, 99 So. 3d 128 (Miss. Sept. 25, 2012).

CHAPTER 21

Administrative Office of Courts

Creation and Duties of Administrative Office of Courts	9-21-1
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CREATION AND DUTIES OF ADMINISTRATIVE OFFICE OF COURTS

SEC.	
9-21-45.	Judicial System Operation Fund created; source of money; use of funds.

§ 9-21-45. Judicial System Operation Fund created; source of money; use of funds.

(1) There is created in the State Treasury a special fund designated as the Judicial System Operation Fund. The funds shall be administered by the Supreme Court through the Administrative Office of Courts. The fund shall consist of monies deposited therein as provided in Section 99-19-72 and monies from any other source designated for deposit into the fund. The Administrative Office of Courts may also accept monies from any public or private source for

deposit into the fund. Money remaining in the fund at the end of a fiscal year shall not lapse into the State General Fund, and any interest earned from the investment of monies in the fund shall be deposited to the credit of the fund.

(2) Monies in the fund shall be subject to appropriation by the Legislature and may only be used for the purpose of the operation of the judicial system in the state as determined necessary by the Supreme Court and to provide additional funds for the judicial salaries set forth in Section 25-3-25 and Section 9-9-11(8). Monies in the fund used for the purposes described in this section shall be in addition to other funds available from any other source for such purposes.

SOURCES: Laws, 2010, ch. 561, § 2; Laws, 2012, ch. 329, § 2, eff from and after July 1, 2012.

Editor's Note — Section 25-3-25, referred to in (2), should be a reference to Section 25-3-35. The section is set out above as amended by Section 2 of Chapter 329, Laws of 2012.

TITLE 11

CIVIL PRACTICE AND PROCEDURE

CHAPTER 1

Practice and Procedure Provisions Common to Courts

§ 11-1-60. Limitation on noneconomic damages in medical malpractice actions; definitions.

JUDICIAL DECISIONS

1. Constitutionality.

High court declined to answer a certified question regarding the constitutionality of Miss. Code Ann. § 11-1-60(2), which generally limited non-economic damages to \$ 1 million, because it would require

speculation and guesswork to determine what portion of the jury's \$ 4 million general verdict represented noneconomic damages. *Sears v. Learmonth*, 95 So. 3d 633 (Miss. Aug. 23, 2012).

§ 11-1-63. Product liability actions; conditions for liability; what constitutes a defective product.

JUDICIAL DECISIONS

2. Expert testimony.

Consumer had not established that the failure to include a graphic adjacent to the written warning on the saw proximately caused his injury under Miss. Code Ann. § 11-1-63. Any testimony presented by the human factors expert that the absence

of a graphic adjacent to the written warning on the table saw rendered the warning inadequate was therefore irrelevant and should have been excluded. *Previto v. Ryobi N. Am., Inc.*, 766 F. Supp. 2d 759 (S.D. Miss. Dec. 16, 2010).

§ 11-1-65. Punitive damages; limitations.

JUDICIAL DECISIONS

4. Availability.

Insureds were not entitled to punitive damages, Miss. Code Ann. § 11-1-65(1)(a), regarding an insurer's alleged bad faith delay in paying an uninsured motorist claim because the reason for the delay was the insurer's ongoing investigation con-

cerning causation and evaluation of the claim, and, as such, the insurer had an arguable reason for the delay; the insurer ultimately tendered full payment of the claim. *James v. State Farm Mut. Auto., INS. Co.*, — F. Supp. 2d —, 2011 U.S. Dist. LEXIS 48845 (S.D. Miss. May 6, 2011).

§ 11-1-66. Immunity of premise owners from civil liability in certain circumstances.

JUDICIAL DECISIONS

3. Independent contractor's employee.

Operator of a nuclear power plant was entitled to summary judgment on an injured employee's premises liability lawsuit because the operator had no duty to

warn an independent contractor and its employee of dangers inherent in the job when the employee for the independent contractor was injured in a fall. *McSwain v. Sys. Energy Res., Inc.*, 97 So. 3d 102 (Miss. Ct. App. Aug. 14, 2012).

CHAPTER 7

Practice and Procedure in Circuit Courts

IN GENERAL

§ 11-7-15. Contributory negligence no bar to recovery of damages; jury may reduce damages.

JUDICIAL DECISIONS

3. Contributory negligence in general.

Motel guests who sustained damages as victims of an armed robbery at the motel did not have a duty to mitigate their damages by abiding by the robbers' demands and, therefore, the trial court did not abuse its discretion in denying the motel owners' request for a comparative negligence jury instruction. *Intown Lessee Assocs., LLC v. Howard*, 67 So. 3d 711 (Miss. June 30, 2011).

Where an injured motorist, who was experiencing chest discomfort, pulled his vehicle partly off the highway, but partly obstructed the right-hand lane of travel in violation of Miss. Code Ann. § 63-3-903, the motorist's act was a proximate and contributing cause an accident, and the trial court did not err by allowing the jury to apportion fault. *Meka v. Grant Plumbing & Air Conditioning Co.*, 67 So. 3d 18 (Miss. Ct. App. June 28, 2011).

CHAPTER 15

Arbitration and Award

IN GENERAL

§ 11-15-1. Who may submit to arbitration.

JUDICIAL DECISIONS

1. In general.

Law client's fee dispute with a law firm that had previously represented her was subject to arbitration pursuant to Miss. Code Ann. § 11-15-1 where the legal ser-

vices contracts contained arbitration clauses that were valid and enforceable, the fee dispute was within the scope of arbitration, and there was no procedural unconscionability or other legal constraint

that precluded enforcement of the arbitration clause. Slater-moore v. Goeldner, — So. 2d —, 2013 Miss. LEXIS 149 (Miss. Apr. 11, 2013).

CHAPTER 21

Partition of Property

REALTY

§ 11-21-9. Controverted title and all equities disposed of.

JUDICIAL DECISIONS

1. Generally.

Award of the entire purchase price of a home to one of the unmarried joint tenants (JT1) was appropriate given that the chancellor could adjust the equities and determine the claims of the joint tenants

and the fact that JT1 had paid the entire purchase price for the home along with the cost of all utilities, insurance, club dues, and taxes while JT2 had paid nothing. Jones v. Graphia, 95 So. 3d 751 (Miss. Ct. App. 2012).

CHAPTER 35

Garnishment

§ 11-35-31. Garnishee's failure to answer.

JUDICIAL DECISIONS

3. Illustrative cases.

As the "earth movement" endorsement in a contractor's general commercial liability policy excluded from coverage the property damage a homeowner suffered, the insurer had no property in its possession belonging to the contractor; therefore the trial court properly set aside the

homeowner's default judgment against the insurer pursuant to Miss. Code Ann. § 11-35-31 and granted the insurer summary judgment on the homeowner's action for a writ of garnishment. Hankins v. Md. Cas. Company/Zurich Am. Ins. Co., 101 So. 3d 645 (Miss. Oct. 4, 2012).

CHAPTER 37

Replevin

§ 11-37-129. Judgment for defendant; default; writ of inquiry.

JUDICIAL DECISIONS

2. Jurisdiction.

Trial court lacked subject matter jurisdiction to enter a writ of inquiry under Miss. Code Ann. § 11-37-129 where: (1) the replevin action was filed under Miss. Code Ann. § 11-37-131 since the property was not pre-seized; (2) § 11-37-131 did not

provide for a writ of inquiry; and (3) jurisdiction ended when the replevin action ended; (4) neither party appealed the grant of defendant's motion to set aside the replevin, which was effectively a Miss. R. Civ. P. 60(b)(4) motion; and (5) the procedures for the replevin were under

Miss. Code Ann. §§ 11-37-141 and 11-37-143, which did not provide for a writ of inquiry. *Magee v. Covington County Bank*, — So. 3d —, 2012 Miss. App. LEXIS 591 (Miss. Ct. App. Sept. 25, 2012).

§ 11-37-131. How replevin commenced—immediate seizure of property not sought.

JUDICIAL DECISIONS

0.5. Jurisdiction.

Trial court lacked subject matter jurisdiction to enter a writ of inquiry under Miss. Code Ann. § 11-37-129 where: (1) the replevin action was filed under Miss. Code Ann. § 11-37-131 since the property was not pre-seized; (2) § 11-37-131 did not provide for a writ of inquiry; and (3) jurisdiction ended when the replevin action ended; (4) neither party appealed the

grant of defendant's motion to set aside the replevin, which was effectively a Miss. R. Civ. P. 60(b)(4) motion; and (5) the procedures for the replevin were under Miss. Code Ann. §§ 11-37-141 and 11-37-143, which did not provide for a writ of inquiry. *Magee v. Covington County Bank*, — So. 3d —, 2012 Miss. App. LEXIS 591 (Miss. Ct. App. Sept. 25, 2012).

§ 11-37-141. Judgment for plaintiff where property not previously seized.

JUDICIAL DECISIONS

1. Jurisdiction.

Trial court lacked subject matter jurisdiction to enter a writ of inquiry under Miss. Code Ann. § 11-37-129 where: (1) the replevin action was filed under Miss. Code Ann. § 11-37-131 since the property was not pre-seized; (2) § 11-37-131 did not provide for a writ of inquiry; and (3) jurisdiction ended when the replevin action ended; (4) neither party appealed the

grant of defendant's motion to set aside the replevin, which was effectively a Miss. R. Civ. P. 60(b)(4) motion; and (5) the procedures for the replevin were under Miss. Code Ann. §§ 11-37-141 and 11-37-143, which did not provide for a writ of inquiry. *Magee v. Covington County Bank*, — So. 3d —, 2012 Miss. App. LEXIS 591 (Miss. Ct. App. Sept. 25, 2012).

§ 11-37-143. Judgment for defendant where property not previously seized.

JUDICIAL DECISIONS

1. Jurisdiction.

Trial court lacked subject matter jurisdiction to enter a writ of inquiry under Miss. Code Ann. § 11-37-129 where: (1) the replevin action was filed under Miss. Code Ann. § 11-37-131 since the property was not pre-seized; (2) § 11-37-131 did not provide for a writ of inquiry; and (3) jurisdiction ended when the replevin action ended; (4) neither party appealed the

grant of defendant's motion to set aside the replevin, which was effectively a Miss. R. Civ. P. 60(b)(4) motion; and (5) the procedures for the replevin were under Miss. Code Ann. §§ 11-37-141 and 11-37-143, which did not provide for a writ of inquiry. *Magee v. Covington County Bank*, — So. 3d —, 2012 Miss. App. LEXIS 591 (Miss. Ct. App. Sept. 25, 2012).

CHAPTER 46

Immunity of State and Political Subdivisions From Liability and
Suit for Torts and Torts of Employees

§ 11-46-1. Definitions.

JUDICIAL DECISIONS

5. Political subdivision.

Definition of “governmental entity” included political subdivisions, and a county was a political subdivision. *Alexander v. Newton County*, — So. 2d —, 2013 Miss. App. LEXIS 197 (Miss. Ct. App. Apr. 23, 2013).

Volunteer firefighter was not immune from suit under the Mississippi Tort

Claims Act (MTCA) for claims arising from an automobile accident because the volunteer fire department was not a political subdivision of the State. Under Miss. Code Ann. § 95-9-1(3)(b), the firefighter could be liable for negligent operation of a vehicle. *Poppenheimer v. Estate of Coyle*, 98 So. 3d 1059 (Miss. Oct. 4, 2012).

§ 11-46-7. Exclusiveness of remedy; joinder of government employee; immunity for acts or omissions occurring within course and scope of employee’s duties; provision of defense for and payment of judgments or settlements of claims against employees; contribution or indemnification by employee.

JUDICIAL DECISIONS

4. Applicability.

Injured motorist’s negligence action against a county was governed by the provisions of the Mississippi Tort Claims Act (MTCA), Miss. Code Ann. § 11-46-1 et seq., because the MTCA was the exclusive

remedy for claims against governmental entities and their employees. *Alexander v. Newton County*, — So. 2d —, 2013 Miss. App. LEXIS 197 (Miss. Ct. App. Apr. 23, 2013).

§ 11-46-9. Exemption of governmental entity from liability on claims based on specified circumstances.

JUDICIAL DECISIONS

1. In general.
6. Discretionary functions.
- 6.5. Ministerial duty.
7. Police or fire protection.
- 7.5. Immunity.

1. In general.

Inmate’s claims against the Department of Corrections—for failure to release the inmate upon completion of the inmate’s sentence—were barred by Miss.

Code Ann. § 11-46-9(1)(m) because the inmate did not seek administrative or other relief during the three and a half months that the inmate claimed the inmate was unlawfully detained, and the inmate was unquestionably confined in the custody of the Department of Corrections when the inmate’s claims arose. *Tillman v. Miss. Dep’t of Corr.*, 95 So. 3d 716 (Miss. Ct. App. 2012).

6. Discretionary functions.

Although a county pleaded the affirmative defense of immunity under the Mississippi Tort Claims Act, Miss. Code Ann. § 11-46-1 et seq., in its answer to a negligence action, the county waived the defense because the county actively participated in the litigation and the county's two-year-and-four-month delay in pursuing the affirmative defense of immunity under Miss. Code Ann. § 11-46-9(1)(d) was unreasonable and unnecessary. *Alexander v. Newton County*, — So. 2d —, 2013 Miss. App. LEXIS 197 (Miss. Ct. App. Apr. 23, 2013).

Mississippi Department of Transportation (MDOT) was immune from suit under Miss. Code Ann. § 11-46-9(1)(d) as Miss. Code Ann. § 65-1-65 did not impose any specific directives as to the time, manner, and conditions for carrying out MDOT's duty to maintain highways, and the duty to remove trees from the right-of-way was discretionary; MDOT was not liable for the driver's injuries arising out of road maintenance. *Little v. Miss. DOT*, — So. 3d —, 2012 Miss. App. LEXIS 627 (Miss. Ct. App. Oct. 9, 2012).

Evidence supported the conclusion that the city's refusal to extend new water service to the subdivision was based upon a perceived lack of adequate fire flow pressure in the water line, and although that perception turned out to be incorrect, even if the city's conduct rose to the level of negligence, that did not amount to an abuse of discretion, nor did it show that the city's decision to deny new water service was arbitrary and capricious. The developer's evidence was insufficient to overcome the city's entitlement to immunity under Miss. Code Ann. §§ 11-46-9(1)(d), (g), and (h). *L&F Homes & Dev., LLC v. City of Gulfport*, — F. Supp. 2d —, 2012 U.S. Dist. LEXIS 100855 (S.D. Miss. July 20, 2012).

6.5. Ministerial duty.

Mississippi Department of Transportation (MDOT) was not immune in a wrong-

ful death claim alleging that a failure to place warning signs around a highway culvert, as required by Miss. Code Ann. § 65-21-1, resulted in an auto accident that caused the decedent's death because § 65-21-1 imposed a ministerial duty, and, as Miss. Code Ann. § 63-3-301 and Miss. Code Ann. § 63-3-303 included no language suggesting abrogation or repeal of § 65-21-1, that section—narrowly, precisely, and specifically requiring warning posts around culverts—remained in effect as an exception to the general rule of § 63-3-303 that the MDOT had discretion over such placement; Miss. Code Ann. § 65-21-1 controlled the specific issue of guide and warning posts around culverts, and § 63-3-303 controlled the discretionary placement of traffic devices that were not the subject of a specific statutory mandate. *Miss. DOT v. Nosef*, — So. 2d —, 2013 Miss. LEXIS 143 (Miss. Apr. 4, 2013).

7. Police or fire protection.

Volunteer firefighter was not immune from suit under the Mississippi Tort Claims Act (MTCA) for claims arising from an automobile accident because the volunteer fire department was not a political subdivision of the State. Under Miss. Code Ann. § 95-9-1(3)(b), the firefighter could be liable for negligent operation of a vehicle. *Poppenheimer v. Estate of Coyle*, 98 So. 3d 1059 (Miss. Oct. 4, 2012).

7.5. Immunity.

Mississippi did not have to show that it qualified for immunity under Miss. Code Ann. § 11-46-9(1)(v) as it was immune from a driver's suit under Miss. Code Ann. § 11-46-9(1)(d); if an entity qualified for immunity under § 11-46-9(1)(d), the conditions for immunity under § 11-46-9(1)(v) were irrelevant. *Little v. Miss. DOT*, — So. 3d —, 2012 Miss. App. LEXIS 627 (Miss. Ct. App. Oct. 9, 2012).

§ 11-46-15. Limitation of liability; exemplary or punitive damages; interest; attorney's fees; reduction of award.

JUDICIAL DECISIONS

4. Governmental immunity.

Mississippi Tort Claims Act, Miss. Code Ann. § 11-46-15(2) bars assessment of punitive damages against state agencies.

Claiborne v. Miss. Bd. of Pharm., — F. Supp. 2d —, 2011 U.S. Dist. LEXIS 93849 (S.D. Miss. Aug. 22, 2011).

CHAPTER 51

Appeals

§ 11-51-3. Appeals to Supreme Court.

JUDICIAL DECISIONS

12. Finality of determination.

13. —Nature and character of final determination.

14. —Final judgments and decrees.

12. Finality of determination.

13. —Nature and character of final determination.

State supreme court was without jurisdiction to entertain an appeal under Miss. Code Ann. § 11-51-3 because an order setting aside a prior order of reinstatement did not adjudicate the case on its merits, and left a pending motion to be

dealt with by the assigned judge. Lafontaine v. Holliday, — So. 2d —, 2013 Miss. LEXIS 146 (Miss. Apr. 11, 2013).

14. —Final judgments and decrees.

Chancellor's order that found father in contempt for failing to pay child support but did not determine the amount of the arrearage or the amount of future child support the father would be obligated to pay was not a final order and could not be considered on appeal. Raven v. Boyd, — So. 2d —, 2013 Miss. App. LEXIS 171 (Miss. Ct. App. Apr. 9, 2013).

§ 11-51-75. Appeal to circuit court from board of supervisors, municipal authorities.

JUDICIAL DECISIONS

3. Bill of exceptions in general.

McKee's bill of exceptions did not comply with the procedural requirements set forth in Miss. Code Ann. § 11-51-75 because it did not contain the mayor's signature, and a city also failed to comply with the requirements because, rather than noting the portions of the resident's bill of exceptions that it deemed incorrect and allowing him to amend it, it filed its own bill of exceptions; however, the court

of appeals did not dismiss for lack of subject matter jurisdiction the resident's appeal of a decision of the city's board of aldermen because the bills of exceptions contained the pertinent and important facts and documents and constituted a record upon which the court of appeals could intelligently act. McKee v. City of Starkville, 97 So. 3d 97 (Miss. Ct. App. 2012).

§ 11-51-79. Appeals from the county court.

JUDICIAL DECISIONS

2. Jurisdiction.

On remand, it was of no consequence that one of the consolidated cases originated in county court because Miss. Code Ann § 11-51-79 required that the replevin and mechanic's lien cases be remanded to the circuit court, not the county court, for

further proceedings and consideration of all claims, possession, and enforcement of liens. *Caterpillar Fin. Servs. Corp. v. Burroughs Diesel, Inc.*, — So. 2d —, 2013 Miss. App. LEXIS 175 (Miss. Ct. App. Apr. 16, 2013).

CHAPTER 55

Litigation Accountability Act of 1988

§ 11-55-5. Assessment of attorney fees and costs against attorney or party for meritless action, claim or defense, unwarranted delay, or unnecessary proceedings.

JUDICIAL DECISIONS

3. Payment of attorneys' fees awarded.

Attorney's fees were awarded in favor of and against the father in a custody proceeding even though the father was proceeding pro se in an appeal of a chancellor's denial of the father's recusal motion.

The appeal was without substantial justification because the chancellor had recused himself long before the appeal, and the father was aware of the recusal. *Balius v. Gaines*, 95 So. 3d 730 (Miss. Ct. App. 2012).

TITLE 15

LIMITATIONS OF ACTIONS AND PREVENTION OF FRAUDS

CHAPTER 1

Limitation of Actions

§ 15-1-5. Period of limitations shall not be changed by contract.

JUDICIAL DECISIONS

7. Miscellaneous.

Claim by homeowners against a builder under the New Home Warranty Act (NHWA), Miss. Code Ann. § 83-58-1 et seq., was not subject to Miss. Code Ann. § 15-1-5 because the NHWA limitations period applied over the more general period in Miss. Code Ann. § 15-1-41. *Townes v. Rusty Ellis Builder, Inc.*, 98 So. 3d 1046 (Miss. 2012).

When homeowners and a builder entered into an agreement purportedly toll-

ing limitations periods applicable to the homeowners' claims against the builder for structural defects in the homeowners' home, the homeowners' common-law claims were time-barred because (1) the claims fell under Miss. Code Ann. § 15-1-41's statute of repose, and (2) Miss. Code Ann. § 15-1-5 barred contracts to change a limitations period. *Townes v. Rusty Ellis Builder, Inc.*, 98 So. 3d 1046 (Miss. 2012).

§ 15-1-41. Limitations applicable to actions arising from deficiencies in constructions, or improvements to real property.

JUDICIAL DECISIONS

3. Applicability.

Claim by homeowners against a builder under the New Home Warranty Act (NHWA), Miss. Code Ann. § 83-58-1 et seq., was not subject to Miss. Code Ann. § 15-1-5 because the NHWA limitations period applied over the more general period in Miss. Code Ann. § 15-1-41. *Townes v. Rusty Ellis Builder, Inc.*, 98 So. 3d 1046 (Miss. 2012).

When homeowners and a builder entered into an agreement purportedly toll-

ing limitations periods applicable to the homeowners' claims against the builder for structural defects in the homeowners' home, the homeowners' common-law claims were time-barred because (1) the claims fell under Miss. Code Ann. § 15-1-41's statute of repose, and (2) Miss. Code Ann. § 15-1-5 barred contracts to change a limitations period. *Townes v. Rusty Ellis Builder, Inc.*, 98 So. 3d 1046 (Miss. 2012).

§ 15-1-49. Limitations applicable to actions not otherwise specifically provided for.

JUDICIAL DECISIONS

39. Particular cases; miscellaneous.
40. — Insurance.

39. Particular cases; miscellaneous.

40. — Insurance.

Insured's action against an insurer for uninsured/underinsured motorist coverage, filed on September 26, 2008, was time-barred under Miss. Code Ann. § 15-

1-49 because the statute of limitations began to run on November 30, 2004, the date a default judgment was entered against a driver, proving the driver was uninsured and the tortfeasor; the insured was aware of her damages on the date of the default judgment. *Madison v. Geico Gen. Ins. Co.*, 49 So. 3d 1166 (Miss. Ct. App. Dec. 14, 2010).

CHAPTER 3

Prevention of Frauds

ARTICLE 1.

IN GENERAL.

§ 15-3-1. Certain contracts to be in writing.

JUDICIAL DECISIONS

2. Applicability.

Where a telephone company's constructive license to continue and use telephone lines and fixtures derived from Miss. Code Ann. § 77-9-715, the constructive license did not violate the statute of frauds, Miss. Code Ann. § 15-3-1, because the statute of

frauds did not apply given that the telephone company's rights arose by operation of law and did not come from a contract. *Marlow, Llc v. Bellsouth Telecomms., Inc.*, — F. Supp. 2d —, 2011 U.S. Dist. LEXIS 54309 (S.D. Miss. May 18, 2011).

ARTICLE 3.

UNIFORM FRAUDULENT TRANSFER ACT.

§ 15-3-101. Definitions.

JUDICIAL DECISIONS

1. Claim against only one tenant.

Decedent's ex-wife was not entitled to execute a judgment against real estate formerly jointly owned by the decedent and his widow but conveyed by four deeds to the widow's sister, although the late-recorded deeds were void as to the ex-wife under Miss. Code Ann. § 89-5-3, because

under Miss. Code Ann. § 15-3-101(b)(iii) (Supp. 2010) the property was not subject to a claim against only one joint tenant, and any right the ex-wife had to execute her judgment on the jointly held property ceased to exist upon the decedent's death. *Kelly v. Roby (In re Estate of Roby)*, 84 So. 3d 786 (Miss. Ct. App. June 28, 2011).

TITLE 17
LOCAL GOVERNMENT; PROVISIONS COMMON TO
COUNTIES AND MUNICIPALITIES

CHAPTER 1
Zoning, Planning and Subdivision Regulation

GENERAL PROVISIONS

§ 17-1-17. Changes.

JUDICIAL DECISIONS

2. Changes in regulations, restrictions, and boundaries.

Resident's due process rights were violated when a city's board of aldermen failed to notify him of the board meeting where it considered and denied his rezon-

ing request because the resident was not given notice of the board's meeting where his rezoning request was denied. *McKee v. City of Starkville*, 97 So. 3d 97 (Miss. Ct. App. 2012).

TITLE 23

ELECTIONS

Chapter 15.	Mississippi Election Code	23-15-1
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CHAPTER 15

Mississippi Election Code

Article 3.	Voter Registration	23-15-11
Article 19.	Absentee Ballots	23-15-621

ARTICLE 3.

VOTER REGISTRATION.

Subarticle A.	Qualification of Electors.....	23-15-11
Subarticle B.	Procedures for Registration.....	23-15-31
Subarticle F.	Purging.....	23-15-151

SUBARTICLE A.

QUALIFICATION OF ELECTORS.

SEC.	
23-15-11.	Qualifications, generally.
23-15-19.	Persons convicted of certain crimes not to be registered.

§ 23-15-11. Qualifications, generally.

[Until the date Chapter 526, Laws of 2012, is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, this section shall read as follows:]

Every inhabitant of this state, except persons adjudicated to be non compos mentis, who is a citizen of the United States of America, eighteen (18) years old and upwards, who has resided in this state for thirty (30) days and for thirty (30) days in the county in which he seeks to vote, and for thirty (30) days in the incorporated municipality in which he seeks to vote, and who has been duly registered as an elector under Section 23-15-33, and who has never been convicted of vote fraud or of any crime listed in Section 241, Mississippi Constitution of 1890, shall be a qualified elector in and for the county, municipality and voting precinct of his residence, and shall be entitled to vote at any election. Any person who will be eighteen (18) years of age or older on or before the date of the general election and who is duly registered to vote not less than thirty (30) days before the primary election associated with the general election, may vote in the primary election even though the person has not reached his or her eighteenth birthday at the time that the person seeks to

vote at the primary election. No others than those specified in this section shall be entitled, or shall be allowed, to vote at any election.

[From and after the date Chapter 526, Laws of 2012, is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, this section shall read as follows:]

Every inhabitant of this state, except persons adjudicated to be non compos mentis, who is a citizen of the United States of America, eighteen (18) years old and upwards, who has resided in this state for thirty (30) days and for thirty (30) days in the county in which he seeks to vote, and for thirty (30) days in the incorporated municipality in which he seeks to vote, and who has been duly registered as an elector under Section 23-15-33, and who has never been convicted of vote fraud or of any crime listed in Section 241, Mississippi Constitution of 1890, shall be a qualified elector in and for the county, municipality and voting precinct of his residence, and shall be entitled to vote at any election upon compliance with Section 23-15-563. Any person who will be eighteen (18) years of age or older on or before the date of the general election and who is duly registered to vote not less than thirty (30) days before the primary election associated with the general election, may vote in the primary election even though the person has not reached his or her eighteenth birthday at the time that the person seeks to vote at the primary election. No others than those specified in this section shall be entitled, or shall be allowed, to vote at any election.

SOURCES: Derived from 1972 Code § 21-11-1 [Codes, 1892, § 3028; 1906, § 3433; Hemingway's 1917, § 5993; 1930, § 2595; 1942, § 3374-60; Laws, 1950, ch. 491, § 60; Laws, 1984, ch. 457, § 2; repealed by Laws, 1986, ch. 495, § 329], § 23-3-11 [Codes, 1942, § 3160; Laws, 1935, ch. 19; Laws, 1936, ch. 320; Laws, 1955 Ex ch. 100, § 2; repealed by Laws, 1986, ch. 495, § 333], and § 23-3-85 [Codes, 1892, § 3631; 1906, § 4138; Hemingway's 1917, § 6772; 1930, § 6207; 1942, § 3235; Laws, 1952, ch. 398, § 2; Laws, 1955, Ex Sess, ch. 101; Laws, 1962, ch. 575; Laws, 1965 Ex Sess, ch. 18, § 1; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 2; Laws, 1997, ch. 315, § 1; Laws, 2000, ch. 430, § 2; Laws, 2008, ch. 442, § 10; Laws, 2012, ch. 517, § 1; Laws, 2012, ch. 526, § 4, eff _____ (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Joint Legislative Committee Note — This section was amended by Section 1 of Chapter 517, Laws of 2012, approved May 2, 2012, and effective from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended. The section was also amended by Section 4 of Chapter 526, Laws of 2012, approved May 17, 2012, and effective from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended. Section 1-1-109 gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments, contingent upon preclearance, as consistent with the legislative intent at the August 16, 2012, meeting of the Committee.

Chapter 517, Laws of 2012 was precleared on November 26, 2012. As of May 15, 2013, Chapter 526 has not been precleared. Supplemental information was requested and is

currently under review by the Department of Justice. The section is set out above in two versions. The first version, effective November 26, 2012, contains the amendments made by Chapter 517 (the addition of vote fraud to the list of crimes that disqualify a person from voting). The second version contains the amendments made by Chapter 517 and the amendments made by Chapter 526 (the addition of a voter ID requirement) and is effective from and after the date Chapter 526 is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended.

Editor's Note — By letter dated November 26, 2012, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2012, ch. 517.

Laws of 2012, ch. 526, §§ 10 and 11 provide:

“SECTION 10. Immediately upon approval by the Governor, or upon approval by the Legislature subsequent to a veto, the Attorney General of the State of Mississippi, or other appropriate official of the State of Mississippi or any other authorized person on behalf of the State of Mississippi, shall submit this act to the Attorney General of the United States or to the United States District Court for the district of Columbia in accordance with the provisions of the Voting Rights Act of 1965, as amended and extended. For the purposes of this act, the Legislature authorizes the Governor of the State of Mississippi, the Secretary of State of the State of Mississippi, or the chairpersons of the elections and Apportionment Committee of the Mississippi House of Representatives and the Elections Committee of the Mississippi Senate, said chairpersons acting jointly, to make the requisite submissions in accordance with the Voting Rights Act of 1965, as amended and extended.

“SECTION 11. This act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended.”

§ 23-15-19. Persons convicted of certain crimes not to be registered.

Any person who has been convicted of vote fraud or of any crime listed in Section 241, Mississippi Constitution of 1890, shall not be registered, or if registered the name of the person shall be erased from the registration book on which it may be found by the registrar or by the election commissioners. Whenever any person shall be convicted in the circuit court of his county of any of those crimes, the registrar shall thereupon erase his name from the registration book; and whenever any person shall be convicted of any of those crimes in any other court of any county, the presiding judge of the court shall, on demand, certify the fact in writing to the registrar, who shall thereupon erase the name of the person from the registration book and file the certificate as a record of his office.

SOURCES: Derived from 1972 Code § 23-5-35 [Codes 1871, § 343; 1880, § 108; 1892, § 3614; 1906, § 4120; Hemingway's 1917, § 6754; 1930, § 6186; 1942, § 3214; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 6; Laws, 2012, ch. 517, § 2, November 26, 2012 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — By letter dated November 26, 2012, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2012, ch. 517.

SUBARTICLE B.

PROCEDURES FOR REGISTRATION.

SEC.

- 23-15-33. Registrar to register voters.
 23-15-35. Clerk of municipality to be registrar; registration books; form of application for registration; registration of county electors by clerk.

§ 23-15-33. Registrar to register voters.

(1) Every person entitled to be registered as an elector in compliance with the laws of this state and who has signed his name on and properly completed the application for registration to vote shall be registered by the registrar in the voting precinct of the residence of such person through the Statewide Elections Management System.

(2) Every person entitled to be registered as an elector in compliance with the laws of this state and who registers to vote pursuant to the National Voter Registration Act of 1993 shall be registered by the registrar in the voting precinct of the residence of such person through the Statewide Elections Management System.

(3) Every person entitled to vote by absentee shall have all absentee applications processed by the registrar through the Statewide Election Management System. The registrar shall account for all absentee ballots delivered to such voters and received from such voters through the Statewide Election Management System.

SOURCES: Derived from 1972 Code § 23-5-31 [Codes, 1880, § 106; 1892, § 3611; 1906, § 4117; Hemingway's 1917, § 6751; 1930, § 6184; 1942, § 3212; Laws, 1955, Ex ch. 99; Laws, 1962, ch. 569, § 2; Laws, 1965 Ex Sess, ch. 13, § 1; Laws, 1978, ch. 393, § 2; Laws, 1984, Ch. 460, § 2; repealed by Laws, 1986, ch. 495, § 335]; en. Laws, 1986, ch. 495, § 9; Laws, 1991, ch. 440, § 7; Laws, 2000, ch. 430, § 1; Laws, 2006, ch. 574, § 1; Laws, 2012, ch. 471, § 1, September 6, 2012 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — By letter dated September 6, 2012, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2012, ch. 471.

§ 23-15-35. Clerk of municipality to be registrar; registration books; form of application for registration; registration of county electors by clerk.

[For municipalities that do not provide the information as required by Section 1 of Chapter 532, Laws of 2008, until January 1, 2010, this section shall read as follows:]

(1)) The clerk of the municipality shall be the registrar of voters of the municipality, and shall take the oath of office prescribed by Section 268 of the

Constitution. The governing authorities shall provide suitable municipal registration books, which shall conform as nearly as practicable to the county registration books. The registrar shall, as nearly as may be practicable, and where not otherwise provided, comply with all the provisions of law regarding state and county elections in keeping and maintaining such registration books and in registering voters thereon. Applications for registration as electors of the municipality shall be made upon a triplicate form provided by and prepared at the expense of the county registrar, which form shall conform as nearly as practicable to the application for registration form provided for in Section 23-15-39.

(2) The municipal clerk shall be authorized to register applicants as county electors. The municipal clerk shall forward notice of registration, a copy of the application for registration, and any changes to the registration when they occur, either by certified mail to the county registrar or by personal delivery to the county registrar provided that a numbered receipt is signed by the registrar in return for the described documents. Upon receipt of the copy of the application for registration or changes to the registration, and if a review of the application indicates that the applicant meets all the criteria necessary to qualify as a county elector, then the county registrar shall make a determination of the county voting precinct in which the person making the application shall be required to vote. The county registrar shall send this county voting precinct information by United States first-class mail, postage prepaid, to the person at the address provided on the application. Any and all mailing costs incurred by the municipal clerk or the county registrar in effectuating this subsection shall be paid by the county board of supervisors. If a review of the copy of the application for registration or changes to the registration indicates that the applicant is not qualified to vote in the county, the county registrar shall challenge the application. The county election commissioners shall review any challenge or disqualification, after having notified the applicant by certified mail of the challenge or disqualification.

(3)) The municipal clerk shall issue to the person making the application a copy of the application, and the county registrar shall process the application in accordance with the law regarding the handling of voter registration applications.

(4) The receipt of a copy of the application for registration sent pursuant to Section 23-15-39(3) shall be sufficient to allow the applicant to be registered as an elector in the municipality, provided that such application is not challenged as provided for therein.

[From and after June 1, 2008, for municipalities that provide the information as required by Section 1 of Chapter 532, Laws of 2008, and for all other municipalities from and after January 1, 2010, this section shall read as follows:]

(1) The clerk of the municipality shall be the registrar of voters of the municipality, and shall take the oath of office prescribed by Section 268 of the

Constitution. The municipal registration shall conform to the county registration which shall be a part of the official record of registered voters as contained in the Statewide Elections Management System. The municipal clerk shall comply with all the provisions of law regarding the registration of voters, including the use of the voter registration applications used by county registrars and prescribed by the Secretary of State under Sections 23-15-39 and 23-15-47.

(2) The municipal clerk shall be authorized to register applicants as county electors. The municipal clerk shall forward notice of registration, a copy of the application for registration, and any changes to the registration when they occur, either by certified mail to the county registrar or by personal delivery to the county registrar provided that a numbered receipt is signed by the registrar in return for the described documents. Upon receipt of the copy of the application for registration or changes to the registration, and if a review of the application indicates that the applicant meets all the criteria necessary to qualify as a county elector, then the county registrar shall make a determination of the county voting precinct in which the person making the application shall be required to vote. The county registrar shall send this county voting precinct information by United States first-class mail, postage prepaid, to the person at the address provided on the application. Any and all mailing costs incurred by the municipal clerk or the county registrar in effectuating this subsection shall be paid by the county board of supervisors. If a review of the copy of the application for registration or changes to the registration indicates that the applicant is not qualified to vote in the county, the county registrar shall challenge the application. The county election commissioners shall review any challenge or disqualification, after having notified the applicant by certified mail of the challenge or disqualification.

(3) The municipal clerk shall issue to the person making the application a copy of the application and the county registrar shall process the application in accordance with the law regarding the handling of voter registration applications.

(4) The receipt of a copy of the application for registration sent pursuant to Section 23-15-39(3) shall be sufficient to allow the applicant to be registered as an elector in the municipality, provided that such application is not challenged as provided for therein.

(5) The municipal clerk of each municipality shall provide the circuit clerk of the county in which the municipality is located the information necessary to conform the municipal registration to the county registration which shall be a part of the official record of registered voters as contained in the Statewide Elections Management System. If any changes to the information occur as a result of redistricting, annexation or other reason, it shall be the responsibility of the municipal clerk to timely provide the changes to the circuit clerk.

SOURCES: Derived from 1972 Code § 21-11-3 [Codes, 1892, § 3029; 1906, § 3434; Hemingway's 1917, § 5994; 1930, § 2596; 1942, § 3374-61; Laws, 1904, ch. 158; Laws, 1950, ch. 491, § 61; Laws, 1984, ch. 457, § 3; repealed by Laws, 1986, ch. 495, § 329]; en, Laws, 1986, ch. 495, § 10; Laws, 1988, ch. 350, § 5; Laws, 2004, ch. 305, § 8; Laws, 2006, ch. 574, § 2; Laws, 2007, ch. 565, § 1; Laws, 2008, ch. 532, § 2; brought forward without change, Laws, 2012, ch. 471, § 6, eff September 6, 2012 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the reenactment of this section.)

Editor's Note — By letter dated September 6, 2012, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2012, ch. 471.

SUBARTICLE F.

PURGING.

SEC.

23-15-151. Roll of persons convicted of certain crimes to be kept by circuit clerk; comparison with registration book.

§ 23-15-151. Roll of persons convicted of certain crimes to be kept by circuit clerk; comparison with registration book.

The circuit clerk of each county is authorized and directed to prepare and keep in his office a full and complete list, in alphabetical order, of persons convicted of vote fraud or of any crime listed in Section 241, Mississippi Constitution of 1890. The clerk shall enter the names of all persons who have been or shall be hereafter convicted of vote fraud or of any crime listed in Section 241, Mississippi Constitution of 1890, in a book prepared and kept for that purpose. The board of supervisors of each county shall, as early as practicable, furnish the circuit clerk of their county with a suitable book for the enrollment of those names showing the name, date of birth, address, court, crime and date of conviction. The roll, when so prepared, shall be compared with the registration book before each election commissioner of the county. A certified copy of any enrollment by one clerk to another will be sufficient authority for the enrollment of the name, or names, in another county.

SOURCES: Derived from 1972 Code § 23-5-37 [Codes, 1906, §§ 879, 4121; Hemingway's 1917, §§ 4037, 6755; 1930, §§ 4079, 6187; 1942, §§ 3215, 7920; Laws, 1898, ch. 62; Laws, 1908, ch. 109; repealed by Laws, 1986, ch. 495, § 331]; en, Laws, 1986, ch. 495, § 42; Laws, 1987, ch. 499, § 1; Laws, 2012, ch. 517, § 3, eff November 26, 2012 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — By letter dated November 26, 2012, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2012, ch. 517.

ARTICLE 11.

NOMINATIONS.

§ 23-15-305. Majority vote required for nomination; run-off elections.

RESEARCH REFERENCES

ALR. Validity of Runoff Voting Election
Methodology. 67 A.L.R.6th 609.

ARTICLE 19.

ABSENTEE BALLOTS.

Subarticle A.	Absentee Balloting Procedures Law.....	23-15-621
Subarticle B.	Armed Services Absentee Voting Law.....	23-15-671
Subarticle C.	Absentee Voter Law.....	23-15-711
Subarticle D.	Provision Applicable to Presidential Election.....	23-15-731

SUBARTICLE A.

ABSENTEE BALLOTING PROCEDURES LAW.

SEC.	
23-15-625.	Duties of registrar relating to the provision and disbursement of absentee voting applications; request for application by person other than elector seeking to vote by absentee ballot; solicitation of absentee ballot applications for persons staying in skilled nursing facility prohibited; exceptions; maintenance of list of absentee voters; public access to list; placement of absentee ballots in ballot boxes; authority to mail applications to qualified electors; use of Statewide Election Management System.
23-15-637.	Timely casting of ballots.
23-15-657.	Requests for absentee ballots by telephone.

§ 23-15-625. Duties of registrar relating to the provision and disbursement of absentee voting applications; request for application by person other than elector seeking to vote by absentee ballot; solicitation of absentee ballot applications for persons staying in skilled nursing facility prohibited; exceptions; maintenance of list of absentee voters; public access to list; placement of absentee ballots in ballot boxes; authority to mail applications to qualified electors; use of Statewide Election Management System.

(1) The registrar shall be responsible for providing applications for absentee voting as provided in this section. At least sixty (60) days prior to any election in which absentee voting is provided for by law, the registrar shall

provide a sufficient number of applications. In the event a special election is called and set at a date which makes it impractical or impossible to prepare applications for absent elector's ballot sixty (60) days prior to the election, the registrar shall provide applications as soon as practicable after the election is called. The registrar shall fill in the date of the particular election on the application for which the application will be used.

(2) The registrar shall be authorized to disburse applications for absentee ballots to any qualified elector within the county where he serves. Any person who presents to the registrar an oral or written request for an absentee ballot application for a voter entitled to vote absentee by mail, other than the elector who seeks to vote by absentee ballot, shall, in the presence of the registrar, sign the application and print on the application his or her name and address and the name of the elector for whom the application is being requested in the place provided for on the application for that purpose. However, if for any reason such person is unable to write the information required, then the registrar shall write the information on a printed form which has been prescribed by the Secretary of State. The form shall provide a place for such person to place his mark after the form has been filled out by the registrar.

(3) It shall be unlawful for any person to solicit absentee ballot applications or absentee ballots for persons staying in any skilled nursing facility as defined in Section 41-7-173. This prohibition shall not apply to:

(a) A family member of the person staying in the skilled nursing facility;

or

(b) A person designated by the person for whom the absentee ballot application or absentee ballot is sought, the registrar or the deputy registrar.

As used in this subsection, "family member" means a spouse, parent, grandparent, sibling, adult child, grandchild or legal guardian.

(4) The registrar in the county wherein a voter is qualified to vote upon receiving the envelope containing the absentee ballots shall keep an accurate list of all persons preparing such ballots, which list shall be kept in a conspicuous place accessible to the public near the entrance to his office. The registrar shall also furnish to each precinct manager a list of the names of all persons in each respective precinct voting absentee ballots to be posted in a conspicuous place at the polling place for public notice. The application on file with the registrar and the envelopes containing the ballots shall be kept by the registrar and deposited in the proper precinct ballot boxes before such boxes are delivered to the election commissioners or managers. At the time such boxes are delivered to the election commissioners or managers, the registrar shall also turn over a list of all such persons who have voted and whose ballots are in the box.

(5) The registrar shall also be authorized to mail one (1) application to any qualified elector of the county for use in a particular election.

(6) The registrar shall process all applications for absentee ballots by using the Statewide Election Management System. The registrar shall account for all absentee ballots delivered to and received from qualified voters by processing such ballots using the Statewide Election Management System.

SOURCES: Derived from 1972 Code § 23-9-405 [Codes, 1942, § 3203-403; Laws, 1972, ch. 490, § 405; repealed by Laws, 1986, ch. 495, § 341]; en, Laws, 1986, ch. 495, § 200; Laws, 1993, ch. 528, § 5; Laws, 1999, ch. 420, § 1; Laws, 2006, ch. 574, § 16; Laws, 2008, ch. 528, § 9; Laws, 2012, ch. 471, § 2, eff September 6, 2012 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — By letter dated September 6, 2012, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2012, ch. 471.

§ 23-15-637. Timely casting of ballots.

Absentee ballots received by mail, except presidential ballots as provided for in Sections 23-15-731 and 23-15-733 and except as otherwise provided by Section 23-15-699, must be received by the registrar by 5:00 p.m. on the date preceding the election; any received after such time shall be handled as provided in Section 23-15-647 and shall not be counted. All ballots cast by the absent elector appearing in person in the office of the registrar shall be cast not later than 12:00 noon on the Saturday immediately preceding elections held on Tuesday, the Thursday immediately preceding elections held on Saturday, or the second day immediately preceding the date of elections held on other days. The registrar shall deposit all absentee ballots which have been timely cast in the ballot boxes upon receipt.

SOURCES: Derived from 1972 Code § 23-9-415 [Codes, 1942, § 3203-403; Laws, 1972, ch. 490, § 403; repealed by Laws, 1986, ch. 495, § 341]; en, Laws, 1986, ch. 495, § 206; Laws, 2012, ch. 465, § 4, eff September 17, 2012 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — By letter dated September 17, 2012, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2012, ch. 465.

§ 23-15-657. Requests for absentee ballots by telephone.

The registrar is authorized to accept requests for absentee ballots by telephone. When a telephone request that an absentee ballot application be mailed by the registrar to an elector is made, the registrar shall ascertain the name and complete address of the person making the telephone request and shall print upon the absentee ballot application the name and complete address of the requestor and the relation of such person to the voter if requested by a person other than the voter and the date such request was made. Such requests shall be processed through the Statewide Election Management System.

SOURCES: Laws, 1993, ch. 528, § 12; Laws, 2012, ch. 471, § 3, eff September 6, 2012 (the date the United States Attorney General interposed no objection

under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — By letter dated September 6, 2012, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2012, ch. 471.

SUBARTICLE B.

ARMED SERVICES ABSENTEE VOTING LAW.

SEC.

- | | |
|------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 23-15-673. | Definitions. |
| 23-15-687. | Applications for absentee ballots; preservation of applications. |
| 23-15-699. | Transmission of absentee ballots and balloting materials to absent voters and receipt of voted absentee ballots, federal postcard applications and Federal Write-In-Absentee Ballots by mail, facsimile or electronic mail delivery. |

§ 23-15-673. Definitions.

(1) For the purposes of this subarticle, the term “absent voter” shall mean and include the following persons if they are absent from their county of residence and are otherwise qualified to vote in Mississippi:

(a) Any enlisted or commissioned members, male or female, of the United States Army, or any of its respective components or various divisions thereof; any enlisted or commissioned members, male or female, of the United States Navy, or any of its respective components or various divisions thereof; any enlisted or commissioned members, male or female, of the United States Air Force, or any of its respective components or various divisions thereof; any enlisted or commissioned members, male or female, of the United States Marines, or any of its respective components or various divisions thereof; or any persons in any division of the armed services of the United States, who are citizens of Mississippi;

(b) Any member of the Merchant Marine and the American Red Cross who is a citizen of Mississippi;

(c) Any disabled war veteran who is a patient in any hospital and who is a citizen of Mississippi;

(d) Any civilian attached to and serving outside of the United States with any branch of the Armed Forces or with the Merchant Marine or American Red Cross, and who is a citizen of Mississippi;

(e) Any citizen of Mississippi temporarily residing outside the territorial limits of the United States and the District of Columbia;

(f) Any citizen of Mississippi enrolled as a student at a United States Military Academy.

(2) The spouse and dependents of any absent voter as set out in paragraphs (a), (b), (c), (d), (e) and (f) of subsection (1) of this section shall also be included in the meaning of absent voter and may register to vote and vote an absentee ballot as provided in this subarticle if also absent from the county of

their residence on the date of the election and otherwise qualified to vote in Mississippi.

(3) For the purpose of this subarticle, the term “election” shall mean and include the following sets of elections: special and runoff special elections, preferential and general elections, first and second primary elections or general elections without preferential elections, whichever system is applicable.

SOURCES: Derived from 1972 Code § 23-9-503 [Codes, 1942, § 3203-202; Laws, 1972, ch. 490, § 202; repealed by Laws, 1986, ch. 495, § 342]; en, Laws, 1986, ch. 495, § 216; Laws, 2000, ch. 519, § 1; Laws, 2010, ch. 446, § 1; Laws, 2012, ch. 465, § 1, September 17, 2012 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor’s Note — By letter dated September 17, 2012, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2012, ch. 465.

§ 23-15-687. Applications for absentee ballots; preservation of applications.

(1)) The registrar shall keep all applications for absentee ballots and shall, within twenty four (24) hours, if possible, send to the absent voter on whose behalf the application is made, the proper affidavit and the proper ballot or ballots applicable to the elections. Such information shall be processed through the Statewide Election Management System.

(2) One (1) application for an absentee ballot shall serve as a request by the applicant for an absentee ballot for:

(a) The next federal general election, including all primary elections associated with the election;

(b) All state and county primary and general elections that occur after the receipt of the application by the registrar through the date of the next federal general election that occurs after the receipt of the application by the registrar.

(3) The registrar shall preserve all applications for absentee ballots for one (1) year as a record to be furnished to any court or other duly constituted authority for inspection or evidence if properly requested.

(4)) If the registrar rejects an application for an absentee ballot or denies a request to register to vote from a uniformed services applicant or an overseas voter, the registrar shall provide the person with the reasons for the rejection.

(5) Any runoff election for a federal election shall be considered a continuation of such federal election.

(6) An absent voter as defined in Section 23-15-673(1) may sign an absentee ballot application by electronic signature. The Secretary of State shall adopt rules necessary to implement this subsection.

SOURCES: Derived from 1972 Code § 23-9-517 [Codes, 1942, § 3203-206; Laws, 1972, ch. 490, § 206; repealed by Laws, 1986, ch. 495, § 342]; en, Laws, 1986, ch. 495, § 223; Laws, 2000, ch. 519, § 4; Laws, 2004, ch. 305, § 16; Laws, 2010, ch. 446, § 3; Laws, 2012, ch. 465, § 2; Laws, 2012, ch. 471, § 4, eff September 6, 2012 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Joint Legislative Committee Note — This section was amended by Section 2 of Chapter 465, Laws of 2012, effective from and after September 17, 2012, the date it was effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended (approved April 23, 2012). It was also amended by Section 4 of Chapter 471, Laws of 2012, effective from and after September 6, 2012, the date it was effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended (approved April 24, 2012). As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109, which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments, contingent on preclearance, as consistent with the legislative intent at the August 16, 2012, meeting of the Committee.

Editor's Note — By letter dated September 6, 2012, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2012, ch. 471.

By letter dated September 17, 2012, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2012, ch. 465.

§ 23-15-699. Transmission of absentee ballots and balloting materials to absent voters and receipt of voted absentee ballots, federal postcard applications and Federal Write-In-Absentee Ballots by mail, facsimile or electronic mail delivery.

(1) Absent voters who have requested to receive absentee ballots and balloting materials may choose to receive such ballots and balloting materials by mail, facsimile device (FAX) or electronic mail delivery (e-mail). The Secretary of State shall establish procedures that allow an absent voter to make the choice authorized by this subsection.

(2) Consistent with the choice that the absent voter exercises pursuant to subsection (1) of this section, the registrar shall, in addition to mail, be authorized to use electronic facsimile (FAX) devices and electronic mail delivery (e-mail) to transmit balloting materials and absentee ballots. If the absent voter does not indicate a preference, delivery of such information shall be by mail.

(3) The registrar is authorized to receive by electronic facsimile (FAX) devices and electronic mail delivery (e-mail):

(a) Voted absentee ballots;

(b) Completed federal postcard applications as described in Section 23-15-677, which shall serve to request absentee ballots or to register to vote or to do both simultaneously; and

(c) Completed Federal Write-In-Absentee Ballots as described in Section 23-15-692.

(4) Once the registrar has received a voted absentee ballot pursuant to this section, he shall place the ballot in an absentee ballot envelope designated for absentee ballots under this subarticle and fill out the required information on the envelope. The registrar shall then notate on the envelope that the ballot was received under this section and a signature across the flap of the envelope shall not be required. Except as provided in this section, absentee ballots received under this subsection shall be treated in the same manner as other absentee ballots received under this subarticle.

(5) Access to voted absentee ballots before they are placed in an absentee ballot envelope shall be strictly limited to election officials who must process the ballot and any election official who views the ballots before they are placed in the envelope shall have the duty to protect the secrecy of the ballot choices; however, the failure of an election official to comply with this subsection shall not invalidate the ballot.

(6) Each circuit clerk shall furnish a suitable electronic mail delivery (e-mail) address that can be used to allow absent voters to comply with the provisions of this subarticle. Absentee ballots returned by any absent voter as defined in Section 23-15-673 must be received by the registrar by 7:00 p.m. on the date of the election.

SOURCES: Laws, 1993, ch. 528, § 13; Laws, 2000, ch. 519, § 6; Laws, 2010, ch. 446, § 6; Laws, 2012, ch. 465, § 3, eff September 17, 2012 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — By letter dated September 17, 2012, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2012, ch. 465.

SUBARTICLE C.

ABSENTEE VOTER LAW.

SEC.

23-15-721. Procedures applicable to electors temporarily residing outside county and to electors who are physically disabled; mailing of ballots to registrar.

§ 23-15-721. Procedures applicable to electors temporarily residing outside county and to electors who are physically disabled; mailing of ballots to registrar.

(1) Electors temporarily residing outside the county and obtaining an absentee ballot under the provisions of paragraph (b) of Section 23-15-715

shall appear before any official authorized to administer oaths or other official authorized to witness absentee balloting as provided in this chapter. The elector shall exhibit to such official his absentee ballot unmarked and thereupon proceed in secret to fill in his ballot. After the elector has properly marked the ballot and properly folded it, he shall deposit it in the envelope furnished him. After he has sealed the envelope he shall deliver it to the official before whom he is appearing and shall subscribe and swear to the elector's certificate provided for in Section 23-15-635, which affidavit shall be printed on the back of the envelope as provided for in Section 23-15-635.

(2) Electors who are temporarily or permanently physically disabled shall sign the elector's certificate and the certificate of attesting witness shall be signed by any person eighteen (18) years of age or older.

(3) After the completion of the requirements of this section, the elector shall mail the envelope containing the ballot to the registrar in the county wherein said elector is qualified to vote. Except as otherwise provided by Section 23-15-699 and excluding presidential ballots as provided for in Sections 23-15-731 and 23-15-733, the ballots must be received by the registrar prior to 5:00 p.m. on the day preceding the election to be counted.

SOURCES: Derived from 1972 Code § 23-9-613 [Codes, 1942, § 3203-307; Laws, 1972, ch. 490, § 307; repealed by Laws, 1986, ch. 495, § 343]; en, Laws, 1986, ch. 495, § 234; Laws, 2012, ch. 465, § 5, eff September 17, 2012 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — By letter dated September 17, 2012, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2012, ch. 465.

SUBARTICLE D.

PROVISION APPLICABLE TO PRESIDENTIAL ELECTION.

SEC.

23-15-733. Disposition of ballots received after election.

§ 23-15-733. Disposition of ballots received after election.

The registrar shall keep safely and unopened all official presidential absentee ballots which are received subsequent to the election. Upon receipt of such ballot, the registrar shall write the day and hour of the receipt of the ballot on its envelope. All such absentee ballots returned to the registrar shall be safely kept unopened by the registrar for the period of time required for the preservation of ballots used in the election, and shall then, without being opened, be destroyed in like manner as the used ballots of the election. Such information shall be processed through the Statewide Election Management System.

SOURCES: Derived from 1972 Code § 23-11-7 [Codes, 1942, § 3203-105 ; Laws, 1972, ch. 490, § 105; repealed by Laws, 1986, ch. 495, § 345]; en, Laws, 1986, ch. 495, § 236; Laws, 2012, ch. 471, § 5, eff September 6, 2012 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor’s Note — By letter dated September 6, 2012, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2012, ch. 471.

ARTICLE 25.

VACANCIES IN OFFICE.

§ 23-15-855. Elections to fill vacancies in office of U.S. Senator; interim appointments by Governor.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of 17th Amendment to United States Constitution, Providing for Direct Election of Senators and Filling Vacancies in State’s Senatorial Delegation. 68 A.L.R.6th 489.

ARTICLE 31.

JUDICIAL OFFICES.

SUBARTICLE A.

GENERAL PROVISIONS.

§ 23-15-981. Two or more candidates qualify for judicial office; majority vote wins; runoff election.

RESEARCH REFERENCES

ALR. Validity of Runoff Voting Election Methodology. 67 A.L.R.6th 609.

SUBARTICLE D.

CAMPAIGN FINANCING.

§ 23-15-1021. Limitations on contributions.

RESEARCH REFERENCES

ALR. Construction and Application of Supreme Court’s Holding in *Citizens United v. Federal Election Com’n*, 130 S. Ct. 876, 175 L. Ed. 2d 753, 187 L.R.R.M. (BNA) 2961, 159 Lab. Cas. (CCH) P 10166 (2010), That Government May Not Pro-

hibit Independent and Indirect Corporate
Expenditures on Political Speech. 65
A.L.R.6th 503.

TITLE 25

PUBLIC OFFICERS AND EMPLOYEES; PUBLIC RECORDS

CHAPTER 9

Statewide Personnel System

PROTECTION OF PUBLIC EMPLOYEE FROM REPRISAL FOR GIVING INFORMATION TO INVESTIGATIVE BODY OR AGENCY

§ 25-9-173. Prohibition against dismissing or adversely affecting compensation or employment status of public employee for providing information to investigative body; reprisals and retaliatory actions; conditions for recovery of damages and other remedies.

JUDICIAL DECISIONS

2. Protected activity.

Employee provided no summary judgment evidence that she reported misconduct by the Mississippi Board of Pharmacy to any of the state agencies. Because the Mississippi whistle blower statutes protected employees from retaliation when they reported improper government

tal action to a state investigative body, Miss. Code Ann. § 25-9-173, the employee's claims under the Mississippi whistle blower statute were dismissed. *Claiborne v. Miss. Bd. of Pharm.*, — F. Supp. 2d —, 2011 U.S. Dist. LEXIS 93849 (S.D. Miss. Aug. 22, 2011).

CHAPTER 43

Administrative Procedures

ARTICLE 1.

GENERAL PROVISIONS.

§ 25-43-1.102. Definitions.

JUDICIAL DECISIONS

1. Regulation or statement.

Mississippi Department of Corrections (MDOC) execution protocol is a "regulation or statement" related only to inmates of the MDOC and is therefore exempt from the provisions of the Mississippi Administrative Procedures Law (MAPL); the protocol is an internal policy concerning lethal injections and the manner in which

executions are carried out and is therefore not subject to the notice and comment requirements of the MAPL. *Mississippians Educating for Smart Justice, Inc. v. Miss. Dep't of Corr.*, 98 So. 3d 459 (Miss. 2012).

Execution protocol of the Mississippi Department of Corrections (MDOC) was exempt from the provisions of the Missis-

Mississippi Administrative Procedures Law (MAPL) under Miss. Code Ann. § 25-53-102(i)(ii)(6) because it was a “regulation or statement” related only to inmates of the MDOC at a specific facility and did not affect any provision of Miss. Code Ann. § 99-19-55 or alter Miss. Code Ann. § 99-19-51; the protocol was not subject to the

notice and comment requirements of the MAPL because it was an internal policy concerning lethal injections and the manner in which executions were carried out. *Mississippians Educating for Smart Justice, Inc. v. Miss. Dep’t of Corr.*, 98 So. 3d 459 (Miss. 2012).

ARTICLE 3.

RULE-MAKING ADOPTION AND EFFECTIVENESS OF RULES.

§ 25-43-3.111. Invalidity of rules not adopted according to article; time limitation.

JUDICIAL DECISIONS

1. Exemption.

Mississippi Department of Corrections (MDOC) execution protocol is a “regulation or statement” related only to inmates of the MDOC and is therefore exempt from the provisions of the Mississippi Administrative Procedures Law (MAPL); the protocol is an internal policy concerning lethal injections and the manner in which executions are carried out and is therefore not subject to the notice and comment requirements of the MAPL. *Mississippians Educating for Smart Justice, Inc. v. Miss. Dep’t of Corr.*, 98 So. 3d 459 (Miss. 2012).

Execution protocol of the Mississippi Department of Corrections (MDOC) was

exempt from the provisions of the Mississippi Administrative Procedures Law (MAPL) under Miss. Code Ann. § 25-53-102(i)(ii)(6) because it was a “regulation or statement” related only to inmates of the MDOC at a specific facility and did not affect any provision of Miss. Code Ann. § 99-19-55 or alter Miss. Code Ann. § 99-19-51; the protocol was not subject to the notice and comment requirements of the MAPL because it was an internal policy concerning lethal injections and the manner in which executions were carried out. *Mississippians Educating for Smart Justice, Inc. v. Miss. Dep’t of Corr.*, 98 So. 3d 459 (Miss. 2012).

TITLE 27

TAXATION AND FINANCE

CHAPTER 13

Corporation Franchise Tax

§ 27-13-13. Multistate corporations.

RESEARCH REFERENCES

ALR. Construction and Application of Uniform Division of Income for Tax Pur- poses Act (UDITPA) — Determination of Business Income. 74 A.L.R.6th 1.

CHAPTER 70

Nonsettling-Manufacturer Cigarette Fee

§ 27-70-5. Tobacco equity tax; exemption; applicability; tax to be in addition to any other tax; tax imposed, levied and assessed on distributor of cigarettes; credit for tax paid on cigarettes returned to distributor.

JUDICIAL DECISIONS

1. Constitutionality.
2. Attorney's fees.

1. Constitutionality.

Miss. Code Ann. § 27-70-5 (2010) violated the Commerce Clause, U.S. Const. art. I, § 8, cl. 3, as it was internally inconsistent since: (1) if another state enacted an identical law and a distributor obtained cigarettes in Mississippi for sale outside of Mississippi, then Mississippi would impose a fee on a transaction and the other state would impose a fee on a transaction; (2) if the cigarettes acquired by the Mississippi distributor were sold intrastate, they would be subject to only one fee; and (3) if another state enacted an identical statute, interstate commerce would bear a burden that intrastate com-

merce would not. *Commonwealth Brands v. Morgan*, — So. 2d —, 2013 Miss. LEXIS 141 (Miss. Apr. 4, 2013).

2. Attorney's fees.

Appellants were not entitled to attorney's fees under 42 U.S.C.S. § 1988, even though they correctly alleged that Miss. Code Ann. 27-70-5 (2010) violated the Commerce Clause, U.S. Const. art. I, § 8, cl. 3, as they had an adequate remedy, which they invoked, declaratory relief under Miss. R. Civ.P. 57; under the Tax Injunction Act, 28 U.S.C.S. § 1341, the constitutionality of a state tax could not be challenged under 42 U.S.C.S. § 1983 in state court if an adequate remedy was available under state law. *Commonwealth Brands v. Morgan*, — So. 2d —, 2013 Miss. LEXIS 141 (Miss. Apr. 4, 2013).

TITLE 31
PUBLIC BUSINESS, BONDS AND OBLIGATIONS

CHAPTER 5

Public Works Contracts

BONDS SECURING PUBLIC CONSTRUCTION CONTRACTS

§ 31-5-53. Time for bringing suit on bond; venue.

JUDICIAL DECISIONS

2. Accrual of action.

Bankruptcy court denied an insurance company's motion for summary judgment on a Mississippi limited liability company's ("LLC's") claim that it was entitled to payment of \$135,766 under a bond the company issued to a general contractor because the general contractor did not pay the LLC for work it performed before it declared Chapter 11 bankruptcy. Documents the company filed in support of its

motion did not establish conclusively that the LLC's claim for compensation was barred by Miss. Code Ann. § 31-5-53(b) because the LLC performed its last work on a construction project more than a year before it filed its adversary proceeding, and a trial was required to resolve the issue of when the LLC performed its last work. *In re Triangle Maint. Serv.*, — Bankr. —, 2013 Bankr. LEXIS 1407 (Bankr. N.D. Miss. Apr. 3, 2013).

TITLE 37

EDUCATION

Chapter 3.	State Department of Education	37-3-1
Chapter 7.	School Districts; Boards of Trustees of School Districts	37-7-1
Chapter 17.	Accreditation of Schools	37-17-1
Chapter 27.	Agricultural High Schools	37-27-1

CHAPTER 3

State Department of Education

SEC.	
37-3-2.	Certification of teachers and administrators.

§ 37-3-2. Certification of teachers and administrators.

(1) There is established within the State Department of Education the Commission on Teacher and Administrator Education, Certification and Licensure and Development. It shall be the purpose and duty of the commission to make recommendations to the State Board of Education regarding standards for the certification and licensure and continuing professional development of those who teach or perform tasks of an educational nature in the public schools of Mississippi.

(2) The commission shall be composed of fifteen (15) qualified members. The membership of the commission shall be composed of the following members to be appointed, three (3) from each congressional district: four (4) classroom teachers; three (3) school administrators; one (1) representative of schools of education of institutions of higher learning located within the state to be recommended by the Board of Trustees of State Institutions of Higher Learning; one (1) representative from the schools of education of independent institutions of higher learning to be recommended by the Board of the Mississippi Association of Independent Colleges; one (1) representative from public community and junior colleges located within the state to be recommended by the State Board for Community and Junior Colleges; one (1) local school board member; and four (4) laypersons. All appointments shall be made by the State Board of Education after consultation with the State Superintendent of Public Education. The first appointments by the State Board of Education shall be made as follows: five (5) members shall be appointed for a term of one (1) year; five (5) members shall be appointed for a term of two (2) years; and five (5) members shall be appointed for a term of three (3) years. Thereafter, all members shall be appointed for a term of four (4) years.

(3) The State Board of Education when making appointments shall designate a chairman. The commission shall meet at least once every two (2) months or more often if needed. Members of the commission shall be compensated at a rate of per diem as authorized by Section 25-3-69 and be reimbursed for actual and necessary expenses as authorized by Section 25-3-41.

(4)(a) An appropriate staff member of the State Department of Education shall be designated and assigned by the State Superintendent of Public Education to serve as executive secretary and coordinator for the commission. No less than two (2) other appropriate staff members of the State Department of Education shall be designated and assigned by the State Superintendent of Public Education to serve on the staff of the commission.

(b) An Office of Educator Misconduct Evaluations shall be established within the State Department of Education to assist the commission in responding to infractions and violations, and in conducting hearings and enforcing the provisions of Section 37-3-2(11), (12), (13), (14) and (15), Mississippi Code of 1972, and violations of the Mississippi Educator Code of Ethics.

(5) It shall be the duty of the commission to:

(a) Set standards and criteria, subject to the approval of the State Board of Education, for all educator preparation programs in the state;

(b) Recommend to the State Board of Education each year approval or disapproval of each educator preparation program in the state, subject to a process and schedule determined by the State Board of Education;

(c) Establish, subject to the approval of the State Board of Education, standards for initial teacher certification and licensure in all fields;

(d) Establish, subject to the approval of the State Board of Education, standards for the renewal of teacher licenses in all fields;

(e) Review and evaluate objective measures of teacher performance, such as test scores, which may form part of the licensure process, and to make recommendations for their use;

(f) Review all existing requirements for certification and licensure;

(g) Consult with groups whose work may be affected by the commission's decisions;

(h) Prepare reports from time to time on current practices and issues in the general area of teacher education and certification and licensure;

(i) Hold hearings concerning standards for teachers' and administrators' education and certification and licensure with approval of the State Board of Education;

(j) Hire expert consultants with approval of the State Board of Education;

(k) Set up ad hoc committees to advise on specific areas; and

(l) Perform such other functions as may fall within their general charge and which may be delegated to them by the State Board of Education.

(6)(a) **Standard License — Approved Program Route.** — An educator entering the school system of Mississippi for the first time and meeting all requirements as established by the State Board of Education shall be granted a standard five-year license. Persons who possess two (2) years of classroom experience as an assistant teacher or who have taught for one (1) year in an accredited public or private school shall be allowed to fulfill student teaching requirements under the supervision of a qualified participating teacher approved by an accredited college of education. The local

school district in which the assistant teacher is employed shall compensate such assistant teachers at the required salary level during the period of time such individual is completing student teaching requirements. Applicants for a standard license shall submit to the department:

(i) An application on a department form;

(ii) An official transcript of completion of a teacher education program approved by the department or a nationally accredited program, subject to the following: Licensure to teach in Mississippi prekindergarten through kindergarten classrooms shall require completion of a teacher education program or a bachelor of science degree with child development emphasis from a program accredited by the American Association of Family and Consumer Sciences (AAFCS) or by the National Association for Education of Young Children (NAEYC) or by the National Council for Accreditation of Teacher Education (NCATE). Licensure to teach in Mississippi kindergarten, for those applicants who have completed a teacher education program, and in Grade 1 through Grade 4 shall require the completion of an interdisciplinary program of studies. Licenses for Grades 4 through 8 shall require the completion of an interdisciplinary program of studies with two (2) or more areas of concentration. Licensure to teach in Mississippi Grades 7 through 12 shall require a major in an academic field other than education, or a combination of disciplines other than education. Students preparing to teach a subject shall complete a major in the respective subject discipline. All applicants for standard licensure shall demonstrate that such person's college preparation in those fields was in accordance with the standards set forth by the National Council for Accreditation of Teacher Education (NCATE) or the National Association of State Directors of Teacher Education and Certification (NASDTEC) or, for those applicants who have a bachelor of science degree with child development emphasis, the American Association of Family and Consumer Sciences (AAFCS);

(iii) A copy of test scores evidencing satisfactory completion of nationally administered examinations of achievement, such as the Educational Testing Service's teacher testing examinations; and

(iv) Any other document required by the State Board of Education.

(b) **Standard License — Nontraditional Teaching Route.** — Beginning January 1, 2004, an individual who has a passing score on the Praxis I Basic Skills and Praxis II Specialty Area Test in the requested area of endorsement may apply for the Teach Mississippi Institute (TMI) program to teach students in Grades 7 through 12 if the individual meets the requirements of this paragraph (b). The State Board of Education shall adopt rules requiring that teacher preparation institutions which provide the Teach Mississippi Institute (TMI) program for the preparation of nontraditional teachers shall meet the standards and comply with the provisions of this paragraph.

(i) The Teach Mississippi Institute (TMI) shall include an intensive eight-week, nine-semester-hour summer program or a curriculum of study

in which the student matriculates in the fall or spring semester, which shall include, but not be limited to, instruction in education, effective teaching strategies, classroom management, state curriculum requirements, planning and instruction, instructional methods and pedagogy, using test results to improve instruction, and a one (1) semester three-hour supervised internship to be completed while the teacher is employed as a full-time teacher intern in a local school district. The TMI shall be implemented on a pilot program basis, with courses to be offered at up to four (4) locations in the state, with one (1) TMI site to be located in each of the three (3) Mississippi Supreme Court districts.

(ii) The school sponsoring the teacher intern shall enter into a written agreement with the institution providing the Teach Mississippi Institute (TMI) program, under terms and conditions as agreed upon by the contracting parties, providing that the school district shall provide teacher interns seeking a nontraditional provisional teaching license with a one-year classroom teaching experience. The teacher intern shall successfully complete the one (1) semester three-hour intensive internship in the school district during the semester immediately following successful completion of the TMI and prior to the end of the one-year classroom teaching experience.

(iii) Upon completion of the nine-semester-hour TMI or the fall or spring semester option, the individual shall submit his transcript to the commission for provisional licensure of the intern teacher, and the intern teacher shall be issued a provisional teaching license by the commission, which will allow the individual to legally serve as a teacher while the person completes a nontraditional teacher preparation internship program.

(iv) During the semester of internship in the school district, the teacher preparation institution shall monitor the performance of the intern teacher. The school district that employs the provisional teacher shall supervise the provisional teacher during the teacher's intern year of employment under a nontraditional provisional license, and shall, in consultation with the teacher intern's mentor at the school district of employment, submit to the commission a comprehensive evaluation of the teacher's performance sixty (60) days prior to the expiration of the nontraditional provisional license. If the comprehensive evaluation establishes that the provisional teacher intern's performance fails to meet the standards of the approved nontraditional teacher preparation internship program, the individual shall not be approved for a standard license.

(v) An individual issued a provisional teaching license under this nontraditional route shall successfully complete, at a minimum, a one-year beginning teacher mentoring and induction program administered by the employing school district with the assistance of the State Department of Education.

(vi) Upon successful completion of the TMI and the internship provisional license period, applicants for a Standard License — Nontra-

ditional Route shall submit to the commission a transcript of successful completion of the twelve (12) semester hours required in the internship program, and the employing school district shall submit to the commission a recommendation for standard licensure of the intern. If the school district recommends licensure, the applicant shall be issued a Standard License — Nontraditional Route which shall be valid for a five-year period and be renewable.

(vii) At the discretion of the teacher preparation institution, the individual shall be allowed to credit the twelve (12) semester hours earned in the nontraditional teacher internship program toward the graduate hours required for a Master of Arts in Teacher (MAT) Degree.

(viii) The local school district in which the nontraditional teacher intern or provisional licensee is employed shall compensate such teacher interns at Step 1 of the required salary level during the period of time such individual is completing teacher internship requirements and shall compensate such Standard License — Nontraditional Route teachers at Step 3 of the required salary level when they complete license requirements.

Implementation of the TMI program provided for under this paragraph (b) shall be contingent upon the availability of funds appropriated specifically for such purpose by the Legislature. Such implementation of the TMI program may not be deemed to prohibit the State Board of Education from developing and implementing additional alternative route teacher licensure programs, as deemed appropriate by the board. The emergency certification program in effect prior to July 1, 2002, shall remain in effect.

A Standard License — Approved Program Route shall be issued for a five-year period, and may be renewed. Recognizing teaching as a profession, a hiring preference shall be granted to persons holding a Standard License — Approved Program Route or Standard License — Nontraditional Teaching Route over persons holding any other license.

(c) **Special License — Expert Citizen.** — In order to allow a school district to offer specialized or technical courses, the State Department of Education, in accordance with rules and regulations established by the State Board of Education, may grant a one-year expert citizen-teacher license to local business or other professional personnel to teach in a public school or nonpublic school accredited or approved by the state. Such person may begin teaching upon his employment by the local school board and licensure by the Mississippi Department of Education. The board shall adopt rules and regulations to administer the expert citizen-teacher license. A Special License — Expert Citizen may be renewed in accordance with the established rules and regulations of the State Department of Education.

(d) **Special License — Nonrenewable.** — The State Board of Education is authorized to establish rules and regulations to allow those educators not meeting requirements in subsection (6)(a), (b) or (c) to be licensed for a period of not more than three (3) years, except by special approval of the State Board of Education.

(e) **Nonlicensed Teaching Personnel.** — A nonlicensed person may teach for a maximum of three (3) periods per teaching day in a public school

or a nonpublic school accredited/approved by the state. Such person shall submit to the department a transcript or record of his education and experience which substantiates his preparation for the subject to be taught and shall meet other qualifications specified by the commission and approved by the State Board of Education. In no case shall any local school board hire nonlicensed personnel as authorized under this paragraph in excess of five percent (5%) of the total number of licensed personnel in any single school.

(f) **Special License — Transitional Bilingual Education.** — Beginning July 1, 2003, the commission shall grant special licenses to teachers of transitional bilingual education who possess such qualifications as are prescribed in this section. Teachers of transitional bilingual education shall be compensated by local school boards at not less than one (1) step on the regular salary schedule applicable to permanent teachers licensed under this section. The commission shall grant special licenses to teachers of transitional bilingual education who present the commission with satisfactory evidence that they (i) possess a speaking and reading ability in a language, other than English, in which bilingual education is offered and communicative skills in English; (ii) are in good health and sound moral character; (iii) possess a bachelor's degree or an associate's degree in teacher education from an accredited institution of higher education; (iv) meet such requirements as to courses of study, semester hours therein, experience and training as may be required by the commission; and (v) are legally present in the United States and possess legal authorization for employment. A teacher of transitional bilingual education serving under a special license shall be under an exemption from standard licensure if he achieves the requisite qualifications therefor. Two (2) years of service by a teacher of transitional bilingual education under such an exemption shall be credited to the teacher in acquiring a Standard Educator License. Nothing in this paragraph shall be deemed to prohibit a local school board from employing a teacher licensed in an appropriate field as approved by the State Department of Education to teach in a program in transitional bilingual education.

(g) In the event any school district meets the highest accreditation standards as defined by the State Board of Education in the accountability system, the State Board of Education, in its discretion, may exempt such school district from any restrictions in paragraph (e) relating to the employment of nonlicensed teaching personnel.

(h) **Highly Qualified Teachers.** — Beginning July 1, 2006, any teacher from any state meeting the federal definition of highly qualified, as described in the No Child Left Behind Act, must be granted a standard five-year license by the State Department of Education.

(7) **Administrator License.** — The State Board of Education is authorized to establish rules and regulations and to administer the licensure process of the school administrators in the State of Mississippi. There will be four (4) categories of administrator licensure with exceptions only through special approval of the State Board of Education.

(a) **Administrator License — Nonpracticing.** — Those educators holding administrative endorsement but having no administrative experience or not serving in an administrative position on January 15, 1997.

(b) **Administrator License — Entry Level.** — Those educators holding administrative endorsement and having met the department's qualifications to be eligible for employment in a Mississippi school district. Administrator License — Entry Level shall be issued for a five-year period and shall be nonrenewable.

(c) **Standard Administrator License — Career Level.** — An administrator who has met all the requirements of the department for standard administrator licensure.

(d) **Administrator License — Nontraditional Route.** — The board may establish a nontraditional route for licensing administrative personnel. Such nontraditional route for administrative licensure shall be available for persons holding, but not limited to, a master of business administration degree, a master of public administration degree, a master of public planning and policy degree or a doctor of jurisprudence degree from an accredited college or university, with five (5) years of administrative or supervisory experience. Successful completion of the requirements of alternate route licensure for administrators shall qualify the person for a standard administrator license.

Individuals seeking school administrator licensure under paragraph (b), (c) or (d) shall successfully complete a training program and an assessment process prescribed by the State Board of Education. All applicants for school administrator licensure shall meet all requirements prescribed by the department under paragraph (b), (c) or (d), and the cost of the assessment process required shall be paid by the applicant.

(8) **Reciprocity.** — (a) The department shall grant a standard license to any individual who possesses a valid standard license from another state and meets minimum Mississippi license requirements or equivalent requirements as determined by the State Board of Education.

(b) The department shall grant a nonrenewable special license to any individual who possesses a credential which is less than a standard license or certification from another state. Such special license shall be valid for the current school year plus one (1) additional school year to expire on June 30 of the second year, not to exceed a total period of twenty-four (24) months, during which time the applicant shall be required to complete the requirements for a standard license in Mississippi.

(9) **Renewal and Reinstatement of Licenses.** — The State Board of Education is authorized to establish rules and regulations for the renewal and reinstatement of educator and administrator licenses. Effective May 15, 1997, the valid standard license held by an educator shall be extended five (5) years beyond the expiration date of the license in order to afford the educator adequate time to fulfill new renewal requirements established pursuant to this subsection. An educator completing a master of education, educational specialist or doctor of education degree in May 1997 for the purpose of upgrading the

educator's license to a higher class shall be given this extension of five (5) years plus five (5) additional years for completion of a higher degree.

(10) All controversies involving the issuance, revocation, suspension or any change whatsoever in the licensure of an educator required to hold a license shall be initially heard in a hearing de novo, by the commission or by a subcommittee established by the commission and composed of commission members for the purpose of holding hearings. Any complaint seeking the denial of issuance, revocation or suspension of a license shall be by sworn affidavit filed with the Commission of Teacher and Administrator Education, Certification and Licensure and Development. The decision thereon by the commission or its subcommittee shall be final, unless the aggrieved party shall appeal to the State Board of Education, within ten (10) days, of the decision of the committee or its subcommittee. An appeal to the State Board of Education shall be on the record previously made before the commission or its subcommittee unless otherwise provided by rules and regulations adopted by the board. The State Board of Education in its authority may reverse, or remand with instructions, the decision of the committee or its subcommittee. The decision of the State Board of Education shall be final.

(11) The State Board of Education, acting through the commission, may deny an application for any teacher or administrator license for one or more of the following:

(a) Lack of qualifications which are prescribed by law or regulations adopted by the State Board of Education;

(b) The applicant has a physical, emotional or mental disability that renders the applicant unfit to perform the duties authorized by the license, as certified by a licensed psychologist or psychiatrist;

(c) The applicant is actively addicted to or actively dependent on alcohol or other habit-forming drugs or is a habitual user of narcotics, barbiturates, amphetamines, hallucinogens or other drugs having similar effect, at the time of application for a license;

(d) Revocation or suspension of an applicant's certificate or license by another state;

(e) Fraud or deceit committed by the applicant in securing or attempting to secure such certification and license;

(f) Failing or refusing to furnish reasonable evidence of identification;

(g) The applicant has been convicted, has pled guilty or entered a plea of nolo contendere to a felony, as defined by federal or state law; or

(h) The applicant has been convicted, has pled guilty or entered a plea of nolo contendere to a sex offense as defined by federal or state law.

(12) The State Board of Education, acting on the recommendation of the commission, may revoke or suspend any teacher or administrator license for specified periods of time for one or more of the following:

(a) Breach of contract or abandonment of employment may result in the suspension of the license for one (1) school year as provided in Section 37-9-57;

(b) Obtaining a license by fraudulent means shall result in immediate suspension and continued suspension for one (1) year after correction is made;

(c) Suspension or revocation of a certificate or license by another state shall result in immediate suspension or revocation and shall continue until records in the prior state have been cleared;

(d) The license holder has been convicted, has pled guilty or entered a plea of nolo contendere to a felony, as defined by federal or state law;

(e) The license holder has been convicted, has pled guilty or entered a plea of nolo contendere to a sex offense, as defined by federal or state law;

(f) The license holder knowingly and willfully committing any of the acts affecting validity of mandatory uniform test results as provided in Section 37-16-4(1);

(g) The license holder has engaged in unethical conduct relating to an educator/student relationship as identified by the State Board of Education in its rules;

(h) The license holder has fondled a student as described in Section 97-5-23, or had any type of sexual involvement with a student as described in Section 97-3-95; or

(i) The license holder has failed to report sexual involvement of a school employee with a student as required by Section 97-5-24.

(13)(a) Dismissal or suspension of a licensed employee by a local school board pursuant to Section 37-9-59 may result in the suspension or revocation of a license for a length of time which shall be determined by the commission and based upon the severity of the offense.

(b) Any offense committed or attempted in any other state shall result in the same penalty as if committed or attempted in this state.

(c) A person may voluntarily surrender a license. The surrender of such license may result in the commission recommending any of the above penalties without the necessity of a hearing. However, any such license which has voluntarily been surrendered by a licensed employee may only be reinstated by a majority vote of all members of the commission present at the meeting called for such purpose.

(14) A person whose license has been suspended on any grounds except criminal grounds may petition for reinstatement of the license after one (1) year from the date of suspension, or after one-half ($\frac{1}{2}$) of the suspended time has lapsed, whichever is greater. A license suspended or revoked on the criminal grounds may be reinstated upon petition to the commission filed after expiration of the sentence and parole or probationary period imposed upon conviction. A revoked, suspended or surrendered license may be reinstated upon satisfactory showing of evidence of rehabilitation. The commission shall require all who petition for reinstatement to furnish evidence satisfactory to the commission of good character, good mental, emotional and physical health and such other evidence as the commission may deem necessary to establish the petitioner's rehabilitation and fitness to perform the duties authorized by the license.

(15) Reporting procedures and hearing procedures for dealing with infractions under this section shall be promulgated by the commission, subject to the approval of the State Board of Education. The revocation or suspension of a license shall be effected at the time indicated on the notice of suspension or revocation. The commission shall immediately notify the superintendent of the school district or school board where the teacher or administrator is employed of any disciplinary action and also notify the teacher or administrator of such revocation or suspension and shall maintain records of action taken. The State Board of Education may reverse or remand with instructions any decision of the commission regarding a petition for reinstatement of a license, and any such decision of the State Board of Education shall be final.

(16) An appeal from the action of the State Board of Education in denying an application, revoking or suspending a license or otherwise disciplining any person under the provisions of this section shall be filed in the Chancery Court of the First Judicial District of Hinds County on the record made, including a verbatim transcript of the testimony at the hearing. The appeal shall be filed within thirty (30) days after notification of the action of the board is mailed or served and the proceedings in chancery court shall be conducted as other matters coming before the court. The appeal shall be perfected upon filing notice of the appeal and by the prepayment of all costs, including the cost of preparation of the record of the proceedings by the State Board of Education, and the filing of a bond in the sum of Two Hundred Dollars (\$200.00) conditioned that if the action of the board be affirmed by the chancery court, the applicant or license holder shall pay the costs of the appeal and the action of the chancery court.

(17) All such programs, rules, regulations, standards and criteria recommended or authorized by the commission shall become effective upon approval by the State Board of Education as designated by appropriate orders entered upon the minutes thereof.

(18) The granting of a license shall not be deemed a property right nor a guarantee of employment in any public school district. A license is a privilege indicating minimal eligibility for teaching in the public schools of Mississippi. This section shall in no way alter or abridge the authority of local school districts to require greater qualifications or standards of performance as a prerequisite of initial or continued employment in such districts.

(19) In addition to the reasons specified in subsections (12) and (13) of this section, the board shall be authorized to suspend the license of any licensee for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a license for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a license suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a license suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be. Actions taken by the board in suspending a license when required by Section 93-11-157 or 93-11-163 are not actions from which an appeal may be taken under this section. Any appeal of a license suspension that is required by Section

93-11-157 or 93-11-163 shall be taken in accordance with the appeal procedure specified in Section 93-11-157 or 93-11-163, as the case may be, rather than the procedure specified in this section. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this chapter, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

SOURCES: Laws, 1982, Ex Sess, ch. 17, § 10; Laws, 1988, ch. 464, § 1; Laws, 1988, ch. 536, § 1; Laws, 1989, ch. 373, § 1; Laws, 1991, ch. 502, § 1; Laws, 1991, ch. 534, § 1; Laws, 1992, ch. 519, § 2; Laws, 1992, ch. 524, § 2; Laws, 1993, ch. 594, § 1; Laws, 1994, ch. 596, § 1; Laws, 1994, ch. 581, § 16; Laws, 1996, ch. 507, § 9; Laws, 1996, ch. 540, § 1; Laws, 1997, ch. 545, § 1; Laws, 2000, ch. 432, § 1; Laws, 2000, ch. 550, § 1; Laws, 2002, ch. 587, § 1; Laws, 2004, ch. 409, § 1; Laws, 2004, ch. 478, § 1; Laws, 2006, ch. 504, § 3; reenacted without change, Laws, 2009, ch. 345, § 2; reenacted and amended, Laws, 2009, ch. 445, § 2; Laws, 2011, ch. 514, § 1; Laws, 2012, ch. 376, § 1, eff from and after July 1, 2012.

Editor's Note — This section is set out to correct an error in the 2012 Cumulative Supplement.

CHAPTER 7

School Districts; Boards of Trustees of School Districts

Article 3. Abolition, Alteration and Creation of Districts 37-7-101

ARTICLE 3.

ABOLITION, ALTERATION AND CREATION OF DISTRICTS.

Sec.
37-7-103. Abolition, reorganization or alteration of district by school board.
37-7-104. Consolidation of certain county school districts under conservatorship into one countywide district under certain circumstances; procedure.
37-7-104.1. Administrative consolidation of all school districts in Bolivar County, Mississippi, into three school districts; procedure.

§ 37-7-103. Abolition, reorganization or alteration of district by school board.

From and after July 1, 1987, the school board of any school district shall have full jurisdiction, power and authority, at any regular meeting thereof or at any special meeting called for that purpose, to abolish such existing district, or to reorganize, change or alter the boundaries of any such district. In addition thereto, with the consent of the school board of the school district involved, the school board may add to such school district any part of the school district adjoining same, and with the consent of the school board of the school district involved, may detach territory from such school district and annex same to an adjoining district. Provided, however, that the consent of the school board of the school districts involved in implementing the provisions of Section

37-7-104, Mississippi Code of 1972, shall not be required for the administrative consolidation of such school districts pursuant to the order of the State Board of Education.

SOURCES: Codes, 1942, § 6274-06; Laws, 1953, Ex Sess, ch. 16, § 6; Laws, 1986, ch. 492, § 52; Laws, 2012, ch. 441, § 2, effective September 11, 2012 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.); Laws, 2012, ch. 551, § 1, effective from and after September 10, 2012 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.).

Joint Legislative Committee Note — This section was amended by Section 2 of Chapter 441, Laws of 2012, effective from and after September 11, 2012, the date it was effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended (approved April 19, 2012). It was also amended by Section 2 of Chapter 551, Laws of 2012, effective from and after September 10, 2012, the date it was effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended. As set out above, this section reflects the language of Section 2 of Chapter 441, Laws of 2012, pursuant to Section 1-3-79, which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section effective on an earlier date.

Editor's Note — By letter dated September 11, 2012, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2012, ch. 441.

By letter dated September 10, 2012, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2012, ch. 551.

§ 37-7-104. Consolidation of certain county school districts under conservatorship into one countywide district under certain circumstances; procedure.

(1) In any Mississippi county in which are located, as of February 8, 2012, three (3) school districts and only three (3) school districts, all of which are under conservatorship as defined by the Mississippi Department of Education as of February 8, 2012, there shall be an administrative consolidation of all of the school districts in the county into one (1) countywide school district with one (1) county board of education. The State Board of Education shall determine the school district(s) applicable to the provisions of this section and spread this finding on the minutes of its August 2012 meeting. On or before September 1, 2012, the State Board of Education shall serve the local school boards applicable to the provisions of this section, or the Mississippi Department of Education Conservator for each of the three (3) school districts, with notice and instruction regarding the action to be taken to comply with this section. In such county, there shall be a new county board of education elected in a November 2013 special election which shall be called for that purpose and the new county board members shall be elected as provided in Section 37-5-7, Mississippi Code of 1972. No previous board member shall be eligible to serve

on the newly elected board. Provided, however, that it shall be the responsibility of the board of supervisors of such county to apportion the countywide school district into five (5) new single member board of education districts which shall be consistent with the supervisors district lines in said county. The board of supervisors of said county shall thereafter publish the same in some newspaper of general circulation within said county for at least three (3) consecutive weeks and after having given notice of publication and recording the same upon the minutes of the board of supervisors of said county, said new district lines will thereafter be effective for the November 2013 special election. If necessary, the county board of education of said county shall reapportion the board of education districts in accordance with applicable law as soon as practicable after the results of the 2020 decennial census are published and as soon as practicable after every decennial census thereafter. The new county board of education, with the written approval of the Mississippi Department of Education Conservator and the State Board of Education, shall provide for the administrative consolidation of all school districts in the county into one (1) countywide school district on or before July 1 next following the November 2013 election. The new county board of education shall serve as the school board for the county. Any school district affected by the required administrative consolidation that does not voluntarily consolidate with the new school district ordered by the county board of education shall be administratively consolidated by the State Board of Education with the countywide school district, to be effective on July 1 following the election of the new county board of education. The State Board of Education shall promptly move on its own motion to administratively consolidate any school district which does not voluntarily consolidate in order to enable the affected school districts to reasonably accomplish the resulting administrative consolidation into one (1) countywide district by July 1 following the election of the new county board of education. All affected school districts shall comply with any consolidation order issued by the county board of education or the State Board of Education, as the case may be, on or before July 1 following the election of the new county board of education.

(2) On July 1 following the election of the new county board of education, the former county board of education and the former board of trustees of any municipal separate, or special municipal separate school district located in such county shall be abolished. All real and personal property which is owned or titled in the name of a school district located in such county shall be transferred to the new reorganized school district of the county in which such school district is located. The Mississippi Department of Education Conservator and the State Board of Education shall be responsible for establishing the contracts for teachers and principals for the next school year following the required administrative consolidation with the consultation of the newly elected successor county board of education. The successor county board of education shall appoint the new county superintendent of education for the reorganized school district. The county superintendent of education of said reorganized school district shall not be elected but shall thereafter be ap-

pointed by the successor county board of education in the manner provided in Section 37-9-25. The superintendents of the former under-performing school districts located in the county shall not be eligible for appointment as the new superintendent. The selection of the appointed county superintendent of education and the assistant superintendent of education in the central administration office of the successor countywide school district shall be the responsibility of the successor county board of education with the approval of the Mississippi Department of Education Conservator and the State Board of Education. No such administratively consolidated school district shall have more than one (1) assistant superintendent of education. It shall be the responsibility of the successor county board of education, with approval of the Mississippi Department of Education Conservator and the State Board of Education, to prepare and approve the budget of the new reorganized districts, and the county board of education may use staff from the former school districts to prepare the budget. Any proposed order of the successor county board of education directing the transfer of the assets, real or personal property of an affected school district in the county, shall be submitted and approved by the State Board of Education. The finding of the State Board of Education shall be final and conclusive for the purposes of the transfer of property required by such administrative consolidation. Any person or school district aggrieved by an order of the successor county school board of education pursuant to the required administrative consolidation may appeal therefrom to the State Board of Education within ten (10) days from the date of the adjournment of the meeting at which such order is entered. Such appeal shall be de novo, and the finding of the State Board of Education upon such question shall be final and conclusive for the purpose of the approval or disapproval of the action by said county board of education.

(3) When any school district in such county is abolished under the provisions of this section, the abolition thereof shall not impair or release the property of such former school district from liability for the payment of the bonds or other indebtedness of such district and it shall be the duty of the board of supervisors of said county to levy taxes on the property of said district so abolished from year to year according to the terms of such indebtedness until same shall be fully paid.

(4) In the administratively consolidated countywide school district created under this section, the ad valorem tax rate shall be determined as set forth under Section 37-57-1 et seq.

(5) Nothing in this section shall be construed to require or restrict the closing of any school or school facility, unless such facility is an unneeded administrative office located within a school district which has been abolished under the provisions of this section. All administrative consolidations under this section shall be accomplished so as not to delay or in any manner negatively affect the desegregation of another school district in the county pursuant to court order.

(6) The State Board of Education shall promulgate rules and regulations to facilitate the administrative consolidation of the school districts in a county

pursuant to this section. When the orders of the successor county board of education adopting the boundaries of the successor countywide school district have been entered and are final, as approved by the State Board of Education, the new district lines shall be submitted by the State Board of Education with the assistance of the Attorney General to the Attorney General of the United States for preclearance or to the United States District Court for the District of Columbia for a declaratory judgment in accordance with the provisions of the Voting Rights Act of 1965, as amended and extended. In the event the change in the school district lines are precleared or approved, the State Board of Education shall formally declare the new lines as the new boundaries of the consolidated countywide school district.

SOURCES: Laws, 2012, ch. 441, § 1, eff September 11, 2012 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section.)

Editor's Note — By letter dated September 11, 2012, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the addition of this section by Laws of 2012, ch. 441.

§ 37-7-104.1. Administrative consolidation of all school districts in Bolivar County, Mississippi, into three school districts; procedure.

(1) In Bolivar County, Mississippi, in which are located, as of January 1, 2012, six (6) school districts, there shall be an administrative consolidation of all of the school districts in the county into three (3) school districts as follows:

(a) One (1) existing school district which shall be the Cleveland Municipal Separate School District;

(b) One (1) new consolidated school district to be designated as North Bolivar Consolidated School District which shall consist of the territory of the former North Bolivar School District and the Mound Bayou Public School District. The central administrative office of the North Bolivar Consolidated School District shall be located in Mound Bayou, Mississippi; and

(c) One (1) new consolidated school district to be designated as West Bolivar Consolidated School District which shall consist of the territory of the former West Bolivar School District, Shaw School District and Benoit School District. The central administrative office of the West Bolivar Consolidated School District shall be located in Rosedale, Mississippi.

(2) On or before September 1, 2012, the State Board of Education shall serve the local school boards in Bolivar County with notice and instructions regarding the timetable for action to be taken to comply with the administrative consolidation required in this section. The State Board of Education shall provide for the administrative consolidation of all school districts in the county outside of the territory of Cleveland Municipal Separate School District into North Bolivar Consolidated School District and West Bolivar Consolidated School District on or before July 1, 2014. In each new consolidated school

district there shall be a new consolidated school district board of trustees elected in a November 2013 special election which shall be called by the Governor for that purpose. The new consolidated school district boards of trustees shall be elected and the terms of office established as provided in Section 37-7-207, Mississippi Code of 1972. The State Board of Education shall determine the boundary lines for the territory of the two (2) new school districts and shall spread a legal description of the new school districts on the minutes of its August 2012 meeting and shall serve the applicable school boards and the board of supervisors with an adequate legal description of these new boundaries. It shall be the responsibility of the State Board of Education with the assistance of the Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER) to apportion the territory of the two (2) new school districts into five (5) new board of trustee election districts for each new school district. The State Board of Education shall thereafter publish the same in some newspaper of general circulation in said county for at least three (3) consecutive weeks and after having given notice of publication and recording the same upon the minutes of the school boards of each school district in the county, said new district lines will thereafter be effective for the November 2013 special election. Any school board member of the former school district residing in the proper election district shall be eligible for election to the new board of trustees for North Bolivar Consolidated School District or West Bolivar Consolidated School District. The local school board of each new school district shall reapportion the school board districts in accordance with the procedure described in Section 37-7-207, Mississippi Code of 1972, as is necessary as soon as practicable after the 2020 decennial census are published and as soon as practicable after every decennial census thereafter. Any school district affected by the required administrative consolidation in such county that does not voluntarily consolidate with the two (2) new school districts ordered by the State Board of Education shall be administratively consolidated by the State Board of Education with the appropriate school district in which such district is located, to be effective on July 1 following the election of the new local school boards. The State Board of Education shall promptly move on its own motion to administratively consolidate a school district which does not voluntarily consolidate in order to enable the affected school districts to reasonably accomplish the resulting administrative consolidation into two (2) school districts by July 1 following the election of the new school boards. All affected school districts shall comply with any consolidation order issued by the State Board of Education on or before July 1 following the election of the new school boards.

(3) On July 1 following the election of the new school district boards of trustees in Bolivar County, the former county board of education and the former board of trustees of North Bolivar School District, Mound Bayou Public School District, West Bolivar School District, Shaw School District and Benoit School District shall be abolished. All real and personal property which is owned or titled in the name of a school district located in such former school district shall be transferred to the new reorganized school district of Bolivar

County in which such former school district is located. Each former school board shall be responsible for establishing the contracts for teachers and principals for the next school year following the required administrative consolidation with the consultation of the newly elected successor school boards. The new Board of Trustees for the North Bolivar Consolidated School District shall appoint the Superintendent of Schools for said school district, and the Board of Trustees for the West Bolivar Consolidated School District shall appoint the Superintendent of Schools for said school district. The subsequent superintendent of schools of said reorganized school districts shall not be elected but shall thereafter be appointed by the successor boards of trustees in the manner provided in Section 37-9-25. Any superintendent serving in the former school districts shall be eligible for appointment as a superintendent in North Bolivar Consolidated School District or West Bolivar Consolidated School District. North Bolivar Consolidated School District and West Bolivar Consolidated School District shall not have more than one (1) assistant superintendent. It shall be the responsibility of the successor boards of trustees to prepare and approve the budget of the respective new reorganized districts, and the successor boards of trustees may use staff from the former school districts to prepare the budget. Any proposed order of the State Board of Education directing the transfer of the assets, real or personal property of an affected school district in the county, shall be final and conclusive for the purposes of the transfer of property required by such administrative consolidation. Any person or school district aggrieved by an order of the successor newly elected board of trustees of a consolidated school district pursuant to the required administrative consolidation may appeal therefrom to the State Board of Education within ten (10) days from the date of the adjournment of the meeting at which such order is entered. Such appeal shall be de novo, and the finding of the State Board of Education upon such question shall be final and conclusive for the purpose of the approval or disapproval of the action by said county board of education.

(4) When any school district in such county is abolished under the provisions of this section, the abolition thereof shall not impair or release the property of such former school district from liability for the payment of the bonds or other indebtedness of such district.

(5) Nothing in this section shall be construed to require the closing of any school or school facility, unless such facility is an unneeded administrative office located within a school district which has been abolished under the provisions of this section. All administrative consolidations under this section shall be accomplished so as not to delay or in any manner negatively affect the desegregation of another school district in the county pursuant to court order.

(6) The State Board of Education shall promulgate rules and regulations to facilitate the administrative consolidation of the school districts in Bolivar County pursuant to this section. The consolidated districts shall make an election within one (1) year of consolidation concerning the group term life insurance described in subsection (7) of Section 25-15-9. When the orders of the State Board of Education adopting the boundaries of the successor school

districts and the successor board of trustees election districts have been entered and are final, as directed by the State Board of Education, the new district lines shall be submitted by the State Board of Education with the assistance of the Attorney General to the Attorney General of the United States for preclearance or to the United States District Court for the District of Columbia for a declaratory judgment in accordance with the provisions of the Voting Rights Act of 1965, as amended and extended. In the event the change in the school district lines and election districts are precleared or approved, the State Board of Education shall formally declare the new lines as the new boundaries of the successor school districts.

SOURCES: Laws, 2012, ch. 551, § 1, eff September 10, 2012 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section.)

Editor’s Note — By letter dated September 10, 2012, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the addition of this section by Laws of 2012, ch. 551.

CHAPTER 9

District Superintendents, Principals, Teachers, and Other Employees

EDUCATION EMPLOYMENT PROCEDURES LAW

§ 37-9-113. Judicial review.

JUDICIAL DECISIONS

2. Scope of appeal; jurisdiction.

Chancery court did not err in granting a school board’s motion to dismiss a teacher’s appeal of the board’s decision to terminate her employment because the teacher failed to file a bond of \$ 200 within twenty days of the receipt of the final decision of the board, as required under Miss. Code Ann. § 37-9-113(2); the teacher’s failure to file a timely bond was jurisdictional and was fatal to her appeal. *Breland v. Harrison County Sch. Bd.*, 96 So. 3d 61 (Miss. Ct. App. Aug. 14, 2012).

Chancery court did not err in granting a school board’s motion to dismiss a teach-

er’s appeal of the board’s decision to terminate her employment because the teacher’s failure to file her notice of appeal within twenty days of the receipt of the board’s decision in accordance with Miss. Code Ann. § 37-9-113(2) deprived the chancery court of jurisdiction; section 37-9-113(2) unambiguously required filing a petition within twenty days of the receipt of the final decision of the board. *Breland v. Harrison County Sch. Bd.*, 96 So. 3d 61 (Miss. Ct. App. Aug. 14, 2012).

CHAPTER 17

Accreditation of Schools

SEC.
37-17-6. Establishment and implementation of permanent performance-based accreditation system; particular accreditation requirements; accreditation audits and reviews; development program for schools failing to meet standards; establishment of a Mississippi Recovery School District; declaration of state of emergency in school district.

§ 37-17-6. Establishment and implementation of permanent performance-based accreditation system; particular accreditation requirements; accreditation audits and reviews; development program for schools failing to meet standards; establishment of a Mississippi Recovery School District; declaration of state of emergency in school district.

[Until the date Chapter 525, Laws of 2012, is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, this section shall read as follows:]

(1) The State Board of Education, acting through the Commission on School Accreditation, shall establish and implement a permanent performance-based accreditation system, and all public elementary and secondary schools shall be accredited under this system.

(2) No later than June 30, 1995, the State Board of Education, acting through the Commission on School Accreditation, shall require school districts to provide school classroom space that is air-conditioned as a minimum requirement for accreditation.

(3)(a) Beginning with the 1994-1995 school year, the State Board of Education, acting through the Commission on School Accreditation, shall require that school districts employ certified school librarians according to the following formula:

Number of Students Per School Library	Number of Certified School Librarians
0 — 499 Students	½ Full-time Equivalent Certified Librarian
500 or More Students	1 Full-time Certified Librarian

(b) The State Board of Education, however, may increase the number of positions beyond the above requirements.

(c) The assignment of certified school librarians to the particular schools shall be at the discretion of the local school district. No individual shall be employed as a certified school librarian without appropriate training and certification as a school librarian by the State Department of Education.

(d) School librarians in the district shall spend at least fifty percent (50%) of direct work time in a school library and shall devote no more than

one-fourth ($\frac{1}{4}$) of the workday to administrative activities that are library related.

(e) Nothing in this subsection shall prohibit any school district from employing more certified school librarians than are provided for in this section.

(f) Any additional millage levied to fund school librarians required for accreditation under this subsection shall be included in the tax increase limitation set forth in Sections 37-57-105 and 37-57-107 and shall not be deemed a new program for purposes of the limitation.

(4) On or before December 31, 2002, the State Board of Education shall implement the performance-based accreditation system for school districts and for individual schools which shall include the following:

(a) High expectations for students and high standards for all schools, with a focus on the basic curriculum;

(b) Strong accountability for results with appropriate local flexibility for local implementation;

(c) A process to implement accountability at both the school district level and the school level;

(d) Individual schools shall be held accountable for student growth and performance;

(e) Set annual performance standards for each of the schools of the state and measure the performance of each school against itself through the standard that has been set for it;

(f) A determination of which schools exceed their standards and a plan for providing recognition and rewards to those schools;

(g) A determination of which schools are failing to meet their standards and a determination of the appropriate role of the State Board of Education and the State Department of Education in providing assistance and initiating possible intervention. A failing district is a district that fails to meet both the absolute student achievement standards and the rate of annual growth expectation standards as set by the State Board of Education for two (2) consecutive years. The State Board of Education shall establish the level of benchmarks by which absolute student achievement and growth expectations shall be assessed. In setting the benchmarks for school districts, the State Board of Education may also take into account such factors as graduation rates, dropout rates, completion rates, the extent to which the school or district employs qualified teachers in every classroom, and any other factors deemed appropriate by the State Board of Education. The State Board of Education, acting through the State Department of Education, shall apply a simple "A," "B," "C," "D" and "F" designation to the current school and school district statewide accountability performance classification labels beginning with the State Accountability Results for the 2011-2012 school year and following, and in the school, district and state report cards required under state and federal law. Under the new designations, a school or school district that has earned a "Star" rating shall be designated an "A" school or school district; a school or school district that has earned a

“High-Performing” rating shall be designated a “B” school or school district; a school or school district that has earned a “Successful” rating shall be designated a “C” school or school district; a school or school district that has earned an “Academic Watch” rating shall be designated a “D” school or school district; a school or school district that has earned a “Low-Performing,” “At-Risk of Failing” or “Failing” rating shall be designated an “F” school or school district. Effective with the implementation of any new curriculum and assessment standards, the State Board of Education, acting through the State Department of Education, is further authorized and directed to change the school and school district accreditation rating system to a simple “A,” “B,” “C,” “D,” and “F” designation based on a combination of student achievement scores and student growth as measured by the statewide testing programs developed by the State Board of Education pursuant to Chapter 16, Title 37, Mississippi Code of 1972. In any statute or regulation containing the former accreditation designations, the new designations shall be applicable;

(h) Development of a comprehensive student assessment system to implement these requirements; and

(i) The State Board of Education may, based on a written request that contains specific reasons for requesting a waiver from the school districts affected by Hurricane Katrina of 2005, hold harmless school districts from assignment of district and school level accountability ratings for the 2005-2006 school year. The State Board of Education upon finding an extreme hardship in the school district may grant the request. It is the intent of the Legislature that all school districts maintain the highest possible academic standards and instructional programs in all schools as required by law and the State Board of Education.

The State Board of Education may continue to assign school district performance levels by using a number classification and may assign individual school performance levels by using a number classification to be consistent with school district performance levels.

(5) Nothing in this section shall be deemed to require a nonpublic school that receives no local, state or federal funds for support to become accredited by the State Board of Education.

(6) The State Board of Education shall create an accreditation audit unit under the Commission on School Accreditation to determine whether schools are complying with accreditation standards.

(7) The State Board of Education shall be specifically authorized and empowered to withhold adequate education program fund allocations, whichever is applicable, to any public school district for failure to timely report student, school personnel and fiscal data necessary to meet state and/or federal requirements.

(8) Deleted.

(9) The State Board of Education shall establish, for those school districts failing to meet accreditation standards, a program of development to be complied with in order to receive state funds, except as otherwise provided in

subsection (14) of this section when the Governor has declared a state of emergency in a school district or as otherwise provided in Section 206, Mississippi Constitution of 1890. The state board, in establishing these standards, shall provide for notice to schools and sufficient time and aid to enable schools to attempt to meet these standards, unless procedures under subsection (14) of this section have been invoked.

(10) Beginning July 1, 1998, the State Board of Education shall be charged with the implementation of the program of development in each applicable school district as follows:

(a) Develop an impairment report for each district failing to meet accreditation standards in conjunction with school district officials;

(b) Notify any applicable school district failing to meet accreditation standards that it is on probation until corrective actions are taken or until the deficiencies have been removed. The local school district shall develop a corrective action plan to improve its deficiencies. For district academic deficiencies, the corrective action plan for each such school district shall be based upon a complete analysis of the following: student test data, student grades, student attendance reports, student dropout data, existence and other relevant data. The corrective action plan shall describe the specific measures to be taken by the particular school district and school to improve: (i) instruction; (ii) curriculum; (iii) professional development; (iv) personnel and classroom organization; (v) student incentives for performance; (vi) process deficiencies; and (vii) reporting to the local school board, parents and the community. The corrective action plan shall describe the specific individuals responsible for implementing each component of the recommendation and how each will be evaluated. All corrective action plans shall be provided to the State Board of Education as may be required. The decision of the State Board of Education establishing the probationary period of time shall be final;

(c) Offer, during the probationary period, technical assistance to the school district in making corrective actions. Beginning July 1, 1998, subject to the availability of funds, the State Department of Education shall provide technical and/or financial assistance to all such school districts in order to implement each measure identified in that district's corrective action plan through professional development and on-site assistance. Each such school district shall apply for and utilize all available federal funding in order to support its corrective action plan in addition to state funds made available under this paragraph;

(d) Assign department personnel or contract, in its discretion, with the institutions of higher learning or other appropriate private entities with experience in the academic, finance and other operational functions of schools to assist school districts;

(e) Provide for publication of public notice at least one time during the probationary period, in a newspaper published within the jurisdiction of the school district failing to meet accreditation standards, or if no newspaper is published therein, then in a newspaper having a general circulation therein.

The publication shall include the following: declaration of school system's status as being on probation; all details relating to the impairment report; and other information as the State Board of Education deems appropriate. Public notices issued under this section shall be subject to Section 13-3-31 and not contrary to other laws regarding newspaper publication.

(11)(a) If the recommendations for corrective action are not taken by the local school district or if the deficiencies are not removed by the end of the probationary period, the Commission on School Accreditation shall conduct a hearing to allow the affected school district to present evidence or other reasons why its accreditation should not be withdrawn. After its consideration of the results of the hearing, the Commission on School Accreditation shall be authorized, with the approval of the State Board of Education, to withdraw the accreditation of a public school district, and issue a request to the Governor that a state of emergency be declared in that district.

(b) If the State Board of Education and the Commission on School Accreditation determine that an extreme emergency situation exists in a school district that jeopardizes the safety, security or educational interests of the children enrolled in the schools in that district and that emergency situation is believed to be related to a serious violation or violations of accreditation standards or state or federal law, or when a school district meets the State Board of Education's definition of a failing school district for two (2) consecutive full school years, or if more than fifty percent (50%) of the schools within the school district are designated as Schools At-Risk in any one (1) year, the State Board of Education may request the Governor to declare a state of emergency in that school district. For purposes of this paragraph, the declarations of a state of emergency shall not be limited to those instances when a school district's impairments are related to a lack of financial resources, but also shall include serious failure to meet minimum academic standards, as evidenced by a continued pattern of poor student performance.

(c) Whenever the Governor declares a state of emergency in a school district in response to a request made under paragraph (a) or (b) of this subsection, the State Board of Education may take one or more of the following actions:

(i) Declare a state of emergency, under which some or all of state funds can be escrowed except as otherwise provided in Section 206, Constitution of 1890, until the board determines corrective actions are being taken or the deficiencies have been removed, or that the needs of students warrant the release of funds. The funds may be released from escrow for any program which the board determines to have been restored to standard even though the state of emergency may not as yet be terminated for the district as a whole;

(ii) Override any decision of the local school board or superintendent of education, or both, concerning the management and operation of the school district, or initiate and make decisions concerning the management and operation of the school district;

(iii) Assign an interim conservator, or in its discretion, contract with a private entity with experience in the academic, finance and other operational functions of schools and school districts, who will have those powers and duties prescribed in subsection (14) of this section;

(iv) Grant transfers to students who attend this school district so that they may attend other accredited schools or districts in a manner that is not in violation of state or federal law;

(v) For states of emergency declared under paragraph (a) only, if the accreditation deficiencies are related to the fact that the school district is too small, with too few resources, to meet the required standards and if another school district is willing to accept those students, abolish that district and assign that territory to another school district or districts. If the school district has proposed a voluntary consolidation with another school district or districts, then if the State Board of Education finds that it is in the best interest of the pupils of the district for the consolidation to proceed, the voluntary consolidation shall have priority over any such assignment of territory by the State Board of Education;

(vi) For states of emergency declared under paragraph (b) only, reduce local supplements paid to school district employees, including, but not limited to, instructional personnel, assistant teachers and extracurricular activities personnel, if the district's impairment is related to a lack of financial resources, but only to an extent that will result in the salaries being comparable to districts similarly situated, as determined by the State Board of Education;

(vii) For states of emergency declared under paragraph (b) only, the State Board of Education may take any action as prescribed in Section 37-17-13.

(d) At the time that satisfactory corrective action has been taken in a school district in which a state of emergency has been declared, the State Board of Education may request the Governor to declare that the state of emergency no longer exists in the district.

(e) There is established a Mississippi Recovery School District within the State Department of Education under the supervision of a deputy superintendent appointed by the State Superintendent of Public Education, who is subject to the approval by the State Board of Education. The Mississippi Recovery School District shall provide leadership and oversight of all school districts that are subject to state conservatorship, as defined in Chapters 17 and 18, Title 37, Mississippi Code of 1972, and shall have all the authority granted under these two (2) chapters. The Mississippi Department of Education, with the approval of the State Board of Education, shall develop policies for the operation and management of the Mississippi Recovery School District. The deputy state superintendent is responsible for the Mississippi Recovery School District and shall be authorized to oversee the administration of the Mississippi Recovery School District, oversee conservators assigned by the State Board of Education to a local school district, hear appeals from school districts under conservatorship that would

normally be filed by students, parents or employees and heard by a local school board, which hearings on appeal shall be conducted in a prompt and timely manner in the school district from which the appeal originated in order to ensure the ability of appellants, other parties and witnesses to appeal without undue burden of travel costs or loss of time from work, and perform other related duties as assigned by the State Superintendent of Public Education. The deputy state superintendent is responsible for the Mississippi Recovery School District and shall determine, based on rigorous professional qualifications set by the State Board of Education, the appropriate individuals to be engaged to be conservators and financial advisors, if applicable, of all school districts subject to state conservatorship. After State Board of Education approval, these individuals shall be deemed independent contractors.

(12) Upon the declaration of a state of emergency in a school district under subsection (11) of this section, the Commission on School Accreditation shall be responsible for public notice at least once a week for at least three (3) consecutive weeks in a newspaper published within the jurisdiction of the school district failing to meet accreditation standards, or if no newspaper is published therein, then in a newspaper having a general circulation therein. The size of the notice shall be no smaller than one-fourth ($\frac{1}{4}$) of a standard newspaper page and shall be printed in bold print. If a conservator has been appointed for the school district, the notice shall begin as follows: "By authority of Section 37-17-6, Mississippi Code of 1972, as amended, adopted by the Mississippi Legislature during the 1991 Regular Session, this school district (name of school district) is hereby placed under the jurisdiction of the State Department of Education acting through its appointed conservator (name of conservator)."

The notice also shall include, in the discretion of the State Board of Education, any or all details relating to the school district's emergency status, including the declaration of a state of emergency in the school district and a description of the district's impairment deficiencies, conditions of any conservatorship and corrective actions recommended and being taken. Public notices issued under this section shall be subject to Section 13-3-31 and not contrary to other laws regarding newspaper publication.

Upon termination of the state of emergency in a school district, the Commission on School Accreditation shall cause notice to be published in the school district in the same manner provided in this section, to include any or all details relating to the corrective action taken in the school district that resulted in the termination of the state of emergency.

(13) The State Board of Education or the Commission on School Accreditation shall have the authority to require school districts to produce the necessary reports, correspondence, financial statements, and any other documents and information necessary to fulfill the requirements of this section.

Nothing in this section shall be construed to grant any individual, corporation, board or conservator the authority to levy taxes except in accordance with presently existing statutory provisions.

(14)(a) Whenever the Governor declares a state of emergency in a school district in response to a request made under subsection (11) of this section, the State Board of Education, in its discretion, may assign an interim conservator to the school district, or in its discretion, may contract with an appropriate private entity with experience in the academic, finance and other operational functions of schools and school districts, who will be responsible for the administration, management and operation of the school district, including, but not limited to, the following activities:

(i) Approving or disapproving all financial obligations of the district, including, but not limited to, the employment, termination, nonrenewal and reassignment of all licensed and nonlicensed personnel, contractual agreements and purchase orders, and approving or disapproving all claim dockets and the issuance of checks; in approving or disapproving employment contracts of superintendents, assistant superintendents or principals, the interim conservator shall not be required to comply with the time limitations prescribed in Sections 37-9-15 and 37-9-105;

(ii) Supervising the day-to-day activities of the district's staff, including reassigning the duties and responsibilities of personnel in a manner which, in the determination of the conservator, will best suit the needs of the district;

(iii) Reviewing the district's total financial obligations and operations and making recommendations to the district for cost savings, including, but not limited to, reassigning the duties and responsibilities of staff;

(iv) Attending all meetings of the district's school board and administrative staff;

(v) Approving or disapproving all athletic, band and other extracurricular activities and any matters related to those activities;

(vi) Maintaining a detailed account of recommendations made to the district and actions taken in response to those recommendations;

(vii) Reporting periodically to the State Board of Education on the progress or lack of progress being made in the district to improve the district's impairments during the state of emergency; and

(viii) Appointing a parent advisory committee, comprised of parents of students in the school district that may make recommendations to the conservator concerning the administration, management and operation of the school district.

Except when, in the determination of the State Board of Education, the school district's impairment is related to a lack of financial resources, the cost of the salary of the conservator and any other actual and necessary costs related to the conservatorship paid by the State Department of Education shall be reimbursed by the local school district from funds other than adequate education program funds. The department shall submit an itemized statement to the superintendent of the local school district for reimbursement purposes, and any unpaid balance may be withheld from the district's adequate education program funds.

At the time that the Governor, in accordance with the request of the State Board of Education, declares that the state of emergency no longer

exists in a school district, the powers and responsibilities of the interim conservator assigned to the district shall cease.

(b) In order to provide loans to school districts under a state of emergency that have impairments related to a lack of financial resources, the School District Emergency Assistance Fund is created as a special fund in the State Treasury into which monies may be transferred or appropriated by the Legislature from any available public education funds.

The State Board of Education may loan monies from the School District Emergency Assistance Fund to a school district that is under a state of emergency in those amounts, as determined by the board, that are necessary to correct the district's impairments related to a lack of financial resources. The loans shall be evidenced by an agreement between the school district and the State Board of Education and shall be repayable in principal, without necessity of interest, to the State General Fund or the Education Enhancement Fund, depending on the source of funding for the loan, by the school district from any allowable funds that are available. The total amount loaned to the district shall be due and payable within five (5) years after the impairments related to a lack of financial resources are corrected. If a school district fails to make payments on the loan in accordance with the terms of the agreement between the district and the State Board of Education, the State Department of Education, in accordance with rules and regulations established by the State Board of Education, may withhold that district's adequate education program funds in an amount and manner that will effectuate repayment consistent with the terms of the agreement; the funds withheld by the department shall be deposited into the State General Fund or the Education Enhancement Fund, as the case may be.

The State Board of Education shall develop a protocol that will outline the performance standards and requisite time line deemed necessary for extreme emergency measures. If the State Board of Education determines that an extreme emergency exists, simultaneous with the powers exercised in this subsection, it shall take immediate action against all parties responsible for the affected school districts having been determined to be in an extreme emergency. The action shall include, but not be limited to, initiating civil actions to recover funds and criminal actions to account for criminal activity. Any funds recovered by the State Auditor or the State Board of Education from the surety bonds of school officials or from any civil action brought under this subsection shall be applied toward the repayment of any loan made to a school district hereunder.

(15) If a majority of the membership of the school board of any school district resigns from office, the State Board of Education shall be authorized to assign an interim conservator, who shall be responsible for the administration, management and operation of the school district until the time as new board members are selected or the Governor declares a state of emergency in that school district under subsection (11), whichever occurs first. In that case, the State Board of Education, acting through the interim conservator, shall have all powers which were held by the previously existing school board, and may

take any action as prescribed in Section 37-17-13 and/or one or more of the actions authorized in this section.

(16)(a) If the Governor declares a state of emergency in a school district, the State Board of Education may take all such action pertaining to that school district as is authorized under subsection (11) or (14) of Section 37-17-6, including the appointment of an interim conservator. The State Board of Education shall also have the authority to issue a written request with documentation to the Governor asking that the office of the superintendent of the school district be subject to recall. If the Governor declares that the office of the superintendent of the school district is subject to recall, the local school board or the county election commission, as the case may be, shall take the following action:

(i) If the office of superintendent is an elected office, in those years in which there is no general election, the name shall be submitted by the State Board of Education to the county election commission, and the county election commission shall submit the question at a special election to the voters eligible to vote for the office of superintendent within the county, and the special election shall be held within sixty (60) days from notification by the State Board of Education. The ballot shall read substantially as follows:

“Shall County Superintendent of Education _____ (here the name of the superintendent shall be inserted) of the _____ (here the title of the school district shall be inserted) be retained in office? Yes ____ No _____”

If a majority of those voting on the question votes against retaining the superintendent in office, a vacancy shall exist which shall be filled in the manner provided by law; otherwise, the superintendent shall remain in office for the term of that office, and at the expiration of the term shall be eligible for qualification and election to another term or terms.

(ii) If the office of superintendent is an appointive office, the name of the superintendent shall be submitted by the president of the local school board at the next regular meeting of the school board for retention in office or dismissal from office. If a majority of the school board voting on the question vote against retaining the superintendent in office, a vacancy shall exist which shall be filled as provided by law, otherwise the superintendent shall remain in office for the duration of his employment contract.

(b) The State Board of Education may issue a written request with documentation to the Governor asking that the membership of the school board of the school district shall be subject to recall. Whenever the Governor declares that the membership of the school board is subject to recall, the county election commission or the local governing authorities, as the case may be, shall take the following action:

(i) If the members of the local school board are elected to office, in those years in which the specific member's office is not up for election, the name of the school board member shall be submitted by the State Board of

Education to the county election commission, and the county election commission at a special election shall submit the question to the voters eligible to vote for the particular member's office within the county or school district, as the case may be, and the special election shall be held within sixty (60) days from notification by the State Board of Education. The ballot shall read substantially as follows:

"Members of the _____ (here the title of the school district shall be inserted) School Board who are not up for election this year are subject to recall because of the school district's failure to meet critical accountability standards as defined in the letter of notification to the Governor from the State Board of Education. Shall the member of the school board representing this area, _____ (here the name of the school board member holding the office shall be inserted), be retained in office? Yes _____ No _____"

If a majority of those voting on the question vote against retaining the member of the school board in office, a vacancy in that board member's office shall exist, which shall be filled in the manner provided by law; otherwise, the school board member shall remain in office for the term of that office, and at the expiration of the term of office, the member shall be eligible for qualification and election to another term or terms of office. However, if a majority of the school board members are recalled in the special election, the Governor shall authorize the board of supervisors of the county in which the school district is situated to appoint members to fill the offices of the members recalled. The board of supervisors shall make those appointments in the manner provided by law for filling vacancies on the school board, and the appointed members shall serve until the office is filled at the next regular special election or general election.

(ii) If the local school board is an appointed school board, the name of all school board members shall be submitted as a collective board by the president of the municipal or county governing authority, as the case may be, at the next regular meeting of the governing authority for retention in office or dismissal from office. If a majority of the governing authority voting on the question vote against retaining the board in office, a vacancy shall exist in each school board member's office, which shall be filled as provided by law; otherwise, the members of the appointed school board shall remain in office for the duration of their term of appointment, and those members may be reappointed.

(iii) If the local school board is comprised of both elected and appointed members, the elected members shall be subject to recall in the manner provided in subparagraph (i) of this subsection, and the appointed members shall be subject to recall in the manner provided in subparagraph (ii).

(17) Beginning with the school district audits conducted for the 1997-1998 fiscal year, the State Board of Education, acting through the Commission on School Accreditation, shall require each school district to comply with stan-

dards established by the State Department of Audit for the verification of fixed assets and the auditing of fixed assets records as a minimum requirement for accreditation.

(18) Before December 1, 1999, the State Board of Education shall recommend a program to the Education Committees of the House of Representatives and the Senate for identifying and rewarding public schools that improve or are high performing. The program shall be described by the board in a written report, which shall include criteria and a process through which improving schools and high-performing schools will be identified and rewarded.

The State Superintendent of Public Education and the State Board of Education also shall develop a comprehensive accountability plan to ensure that local school boards, superintendents, principals and teachers are held accountable for student achievement. A written report on the accountability plan shall be submitted to the Education Committees of both houses of the Legislature before December 1, 1999, with any necessary legislative recommendations.

(19) Before January 1, 2008, the State Board of Education shall evaluate and submit a recommendation to the Education Committees of the House of Representatives and the Senate on inclusion of graduation rate and dropout rate in the school level accountability system.

(20) If a local school district is determined as failing and placed into conservatorship for reasons authorized by the provisions of this section, the conservator appointed to the district shall, within forty-five (45) days after being appointed, present a detailed and structured corrective action plan to move the local school district out of conservatorship status to the local school board and local superintendent of education if they have not been removed by the conservator, or if the board and superintendent have been removed, to the local governing authority of the municipality or county in which the school district under conservatorship is located. A copy of the conservator's corrective action plan shall also be filed with the State Board of Education.

[From and after the date Chapter 525, Laws of 2012, is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, this section shall read as follows:]

(1) The State Board of Education, acting through the Commission on School Accreditation, shall establish and implement a permanent performance-based accreditation system, and all public elementary and secondary schools shall be accredited under this system.

(2) No later than June 30, 1995, the State Board of Education, acting through the Commission on School Accreditation, shall require school districts to provide school classroom space that is air-conditioned as a minimum requirement for accreditation.

(3)(a) Beginning with the 1994-1995 school year, the State Board of Education, acting through the Commission on School Accreditation, shall require that school districts employ certified school librarians according to the following formula:

Number of Students Per School Library	Number of Certified School Librarians
0 — 499 Students	$\frac{1}{2}$ Full-time Equivalent Certified Librarian
500 or More Students	1 Full-time Certified Librarian

(b) The State Board of Education, however, may increase the number of positions beyond the above requirements.

(c) The assignment of certified school librarians to the particular schools shall be at the discretion of the local school district. No individual shall be employed as a certified school librarian without appropriate training and certification as a school librarian by the State Department of Education.

(d) School librarians in the district shall spend at least fifty percent (50%) of direct work time in a school library and shall devote no more than one-fourth ($\frac{1}{4}$) of the workday to administrative activities that are library related.

(e) Nothing in this subsection shall prohibit any school district from employing more certified school librarians than are provided for in this section.

(f) Any additional millage levied to fund school librarians required for accreditation under this subsection shall be included in the tax increase limitation set forth in Sections 37-57-105 and 37-57-107 and shall not be deemed a new program for purposes of the limitation.

(4) On or before December 31, 2002, the State Board of Education shall implement the performance-based accreditation system for school districts and for individual schools which shall include the following:

(a) High expectations for students and high standards for all schools, with a focus on the basic curriculum;

(b) Strong accountability for results with appropriate local flexibility for local implementation;

(c) A process to implement accountability at both the school district level and the school level;

(d) Individual schools shall be held accountable for student growth and performance;

(e) Set annual performance standards for each of the schools of the state and measure the performance of each school against itself through the standard that has been set for it;

(f) A determination of which schools exceed their standards and a plan for providing recognition and rewards to those schools;

(g) A determination of which schools are failing to meet their standards and a determination of the appropriate role of the State Board of Education and the State Department of Education in providing assistance and initiating possible intervention. A failing district is a district that fails to meet both the absolute student achievement standards and the rate of annual growth expectation standards as set by the State Board of Education for two (2)

consecutive years. The State Board of Education shall establish the level of benchmarks by which absolute student achievement and growth expectations shall be assessed. In setting the benchmarks for school districts, the State Board of Education may also take into account such factors as graduation rates, dropout rates, completion rates, the extent to which the school or district employs qualified teachers in every classroom, and any other factors deemed appropriate by the State Board of Education. The State Board of Education, acting through the State Department of Education, shall apply a simple “A,” “B,” “C,” “D” and “F” designation to the current school and school district statewide accountability performance classification labels beginning with the State Accountability Results for the 2011-2012 school year and following, and in the school, district and state report cards required under state and federal law. Under the new designations, a school or school district that has earned a “Star” rating shall be designated an “A” school or school district; a school or school district that has earned a “High-Performing” rating shall be designated a “B” school or school district; a school or school district that has earned a “Successful” rating shall be designated a “C” school or school district; a school or school district that has earned an “Academic Watch” rating shall be designated a “D” school or school district; a school or school district that has earned a “Low-Performing,” “At-Risk of Failing” or “Failing” rating shall be designated an “F” school or school district. Effective with the implementation of any new curriculum and assessment standards, the State Board of Education, acting through the State Department of Education, is further authorized and directed to change the school and school district accreditation rating system to a simple “A,” “B,” “C,” “D,” and “F” designation based on a combination of student achievement scores and student growth as measured by the statewide testing programs developed by the State Board of Education pursuant to Chapter 16, Title 37, Mississippi Code of 1972. In any statute or regulation containing the former accreditation designations, the new designations shall be applicable;

(h) Development of a comprehensive student assessment system to implement these requirements; and

(i) The State Board of Education may, based on a written request that contains specific reasons for requesting a waiver from the school districts affected by Hurricane Katrina of 2005, hold harmless school districts from assignment of district and school level accountability ratings for the 2005-2006 school year. The State Board of Education upon finding an extreme hardship in the school district may grant the request. It is the intent of the Legislature that all school districts maintain the highest possible academic standards and instructional programs in all schools as required by law and the State Board of Education.

The State Board of Education may continue to assign school district performance levels by using a number classification and may assign individual school performance levels by using a number classification to be consistent with school district performance levels.

(5) Nothing in this section shall be deemed to require a nonpublic school that receives no local, state or federal funds for support to become accredited by the State Board of Education.

(6) The State Board of Education shall create an accreditation audit unit under the Commission on School Accreditation to determine whether schools are complying with accreditation standards.

(7) The State Board of Education shall be specifically authorized and empowered to withhold adequate education program fund allocations, whichever is applicable, to any public school district for failure to timely report student, school personnel and fiscal data necessary to meet state and/or federal requirements.

(8) Deleted.

(9) The State Board of Education shall establish, for those school districts failing to meet accreditation standards, a program of development to be complied with in order to receive state funds, except as otherwise provided in subsection (14) of this section when the Governor has declared a state of emergency in a school district or as otherwise provided in Section 206, Mississippi Constitution of 1890. The state board, in establishing these standards, shall provide for notice to schools and sufficient time and aid to enable schools to attempt to meet these standards, unless procedures under subsection (14) of this section have been invoked.

(10) Beginning July 1, 1998, the State Board of Education shall be charged with the implementation of the program of development in each applicable school district as follows:

(a) Develop an impairment report for each district failing to meet accreditation standards in conjunction with school district officials;

(b) Notify any applicable school district failing to meet accreditation standards that it is on probation until corrective actions are taken or until the deficiencies have been removed. The local school district shall develop a corrective action plan to improve its deficiencies. For district academic deficiencies, the corrective action plan for each such school district shall be based upon a complete analysis of the following: student test data, student grades, student attendance reports, student dropout data, existence and other relevant data. The corrective action plan shall describe the specific measures to be taken by the particular school district and school to improve: (i) instruction; (ii) curriculum; (iii) professional development; (iv) personnel and classroom organization; (v) student incentives for performance; (vi) process deficiencies; and (vii) reporting to the local school board, parents and the community. The corrective action plan shall describe the specific individuals responsible for implementing each component of the recommendation and how each will be evaluated. All corrective action plans shall be provided to the State Board of Education as may be required. The decision of the State Board of Education establishing the probationary period of time shall be final;

(c) Offer, during the probationary period, technical assistance to the school district in making corrective actions. Beginning July 1, 1998, subject

to the availability of funds, the State Department of Education shall provide technical and/or financial assistance to all such school districts in order to implement each measure identified in that district's corrective action plan through professional development and on-site assistance. Each such school district shall apply for and utilize all available federal funding in order to support its corrective action plan in addition to state funds made available under this paragraph;

(d) Assign department personnel or contract, in its discretion, with the institutions of higher learning or other appropriate private entities with experience in the academic, finance and other operational functions of schools to assist school districts;

(e) Provide for publication of public notice at least one time during the probationary period, in a newspaper published within the jurisdiction of the school district failing to meet accreditation standards, or if no newspaper is published therein, then in a newspaper having a general circulation therein. The publication shall include the following: declaration of school system's status as being on probation; all details relating to the impairment report; and other information as the State Board of Education deems appropriate. Public notices issued under this section shall be subject to Section 13-3-31 and not contrary to other laws regarding newspaper publication.

(11)(a) If the recommendations for corrective action are not taken by the local school district or if the deficiencies are not removed by the end of the probationary period, the Commission on School Accreditation shall conduct a hearing to allow the affected school district to present evidence or other reasons why its accreditation should not be withdrawn. Additionally, if the local school district violates accreditation standards that have been determined by the policies and procedures of the State Board of Education to be a basis for withdrawal of school district's accreditation without a probationary period, the Commission on School Accreditation shall conduct a hearing to allow the affected school district to present evidence or other reasons why its accreditation should not be withdrawn. After its consideration of the results of the hearing, the Commission on School Accreditation shall be authorized, with the approval of the State Board of Education, to withdraw the accreditation of a public school district, and issue a request to the Governor that a state of emergency be declared in that district.

(b) If the State Board of Education and the Commission on School Accreditation determine that an extreme emergency situation exists in a school district that jeopardizes the safety, security or educational interests of the children enrolled in the schools in that district and that emergency situation is believed to be related to a serious violation or violations of accreditation standards or state or federal law, or when a school district meets the State Board of Education's definition of a failing school district for two (2) consecutive full school years, or if more than fifty percent (50%) of the schools within the school district are designated as Schools At-Risk in any one (1) year, the State Board of Education may request the Governor to declare a state of emergency in that school district. For purposes of this

paragraph, the declarations of a state of emergency shall not be limited to those instances when a school district's impairments are related to a lack of financial resources, but also shall include serious failure to meet minimum academic standards, as evidenced by a continued pattern of poor student performance.

(c) Whenever the Governor declares a state of emergency in a school district in response to a request made under paragraph (a) or (b) of this subsection, the State Board of Education may take one or more of the following actions:

(i) Declare a state of emergency, under which some or all of state funds can be escrowed except as otherwise provided in Section 206, Constitution of 1890, until the board determines corrective actions are being taken or the deficiencies have been removed, or that the needs of students warrant the release of funds. The funds may be released from escrow for any program which the board determines to have been restored to standard even though the state of emergency may not as yet be terminated for the district as a whole;

(ii) Override any decision of the local school board or superintendent of education, or both, concerning the management and operation of the school district, or initiate and make decisions concerning the management and operation of the school district;

(iii) Assign an interim conservator, or in its discretion, contract with a private entity with experience in the academic, finance and other operational functions of schools and school districts, who will have those powers and duties prescribed in subsection (14) of this section;

(iv) Grant transfers to students who attend this school district so that they may attend other accredited schools or districts in a manner that is not in violation of state or federal law;

(v) For states of emergency declared under paragraph (a) only, if the accreditation deficiencies are related to the fact that the school district is too small, with too few resources, to meet the required standards and if another school district is willing to accept those students, abolish that district and assign that territory to another school district or districts. If the school district has proposed a voluntary consolidation with another school district or districts, then if the State Board of Education finds that it is in the best interest of the pupils of the district for the consolidation to proceed, the voluntary consolidation shall have priority over any such assignment of territory by the State Board of Education;

(vi) For states of emergency declared under paragraph (b) only, reduce local supplements paid to school district employees, including, but not limited to, instructional personnel, assistant teachers and extracurricular activities personnel, if the district's impairment is related to a lack of financial resources, but only to an extent that will result in the salaries being comparable to districts similarly situated, as determined by the State Board of Education;

(vii) For states of emergency declared under paragraph (b) only, the State Board of Education may take any action as prescribed in Section 37-17-13.

(d) At the time that satisfactory corrective action has been taken in a school district in which a state of emergency has been declared, the State Board of Education may request the Governor to declare that the state of emergency no longer exists in the district.

(e) The parent or legal guardian of a school-age child who is enrolled in a school district whose accreditation has been withdrawn by the Commission on School Accreditation and without approval of that school district may file a petition in writing to a school district accredited by the Commission on School Accreditation for a legal transfer. The school district accredited by the Commission on School Accreditation may grant the transfer according to the procedures of Section 37-15-31(1)(b). In the event the accreditation of the student's home district is restored after a transfer has been approved, the student may continue to attend the transferee school district. The per-pupil amount of the adequate education program allotment, including the collective "add-on program" costs for the student's home school district shall be transferred monthly to the school district accredited by the Commission on School Accreditation that has granted the transfer of the school-age child.

(f) Upon the declaration of a state of emergency for any school district in which the Governor has previously declared a state of emergency, the State Board of Education may either (i) establish a conservatorship or (ii) abolish the school district and administratively consolidate the school district with one or more existing school districts or (iii) reduce the size of the district and administratively consolidate parts of the district, as determined by the State Board of Education; provided, however, that no school district which is not under conservatorship shall be required to accept additional territory over the objection of the district.

(g) There is established a Mississippi Recovery School District within the State Department of Education under the supervision of a deputy superintendent appointed by the State Superintendent of Public Education, who is subject to the approval by the State Board of Education. The Mississippi Recovery School District shall provide leadership and oversight of all school districts that are subject to state conservatorship, as defined in Chapters 17 and 18, Title 37, Mississippi Code of 1972, and shall have all the authority granted under these two (2) chapters. The Mississippi Department of Education, with the approval of the State Board of Education, shall develop policies for the operation and management of the Mississippi Recovery School District. The deputy state superintendent is responsible for the Mississippi Recovery School District and shall be authorized to oversee the administration of the Mississippi Recovery School District, oversee conservators assigned by the State Board of Education to a local school district, hear appeals from school districts under conservatorship that would normally be filed by students, parents or employees and heard by a local school board, which hearings on appeal shall be conducted in a prompt and

timely manner in the school district from which the appeal originated in order to ensure the ability of appellants, other parties and witnesses to appeal without undue burden of travel costs or loss of time from work, and perform other related duties as assigned by the State Superintendent of Public Education. The deputy state superintendent is responsible for the Mississippi Recovery School District and shall determine, based on rigorous professional qualifications set by the State Board of Education, the appropriate individuals to be engaged to be conservators and financial advisors, if applicable, of all school districts subject to state conservatorship. After State Board of Education approval, these individuals shall be deemed independent contractors.

(12) Upon the declaration of a state of emergency in a school district under subsection (11) of this section, the Commission on School Accreditation shall be responsible for public notice at least once a week for at least three (3) consecutive weeks in a newspaper published within the jurisdiction of the school district failing to meet accreditation standards, or if no newspaper is published therein, then in a newspaper having a general circulation therein. The size of the notice shall be no smaller than one-fourth ($\frac{1}{4}$) of a standard newspaper page and shall be printed in bold print. If a conservator has been appointed for the school district, the notice shall begin as follows: "By authority of Section 37-17-6, Mississippi Code of 1972, as amended, adopted by the Mississippi Legislature during the 1991 Regular Session, this school district (name of school district) is hereby placed under the jurisdiction of the State Department of Education acting through its appointed conservator (name of conservator)."

The notice also shall include, in the discretion of the State Board of Education, any or all details relating to the school district's emergency status, including the declaration of a state of emergency in the school district and a description of the district's impairment deficiencies, conditions of any conservatorship and corrective actions recommended and being taken. Public notices issued under this section shall be subject to Section 13-3-31 and not contrary to other laws regarding newspaper publication.

Upon termination of the state of emergency in a school district, the Commission on School Accreditation shall cause notice to be published in the school district in the same manner provided in this section, to include any or all details relating to the corrective action taken in the school district that resulted in the termination of the state of emergency.

(13) The State Board of Education or the Commission on School Accreditation shall have the authority to require school districts to produce the necessary reports, correspondence, financial statements, and any other documents and information necessary to fulfill the requirements of this section.

Nothing in this section shall be construed to grant any individual, corporation, board or conservator the authority to levy taxes except in accordance with presently existing statutory provisions.

(14)(a) Whenever the Governor declares a state of emergency in a school district in response to a request made under subsection (11) of this section,

the State Board of Education, in its discretion, may assign an interim conservator to the school district, or in its discretion, may contract with an appropriate private entity with experience in the academic, finance and other operational functions of schools and school districts, who will be responsible for the administration, management and operation of the school district, including, but not limited to, the following activities:

(i) Approving or disapproving all financial obligations of the district, including, but not limited to, the employment, termination, nonrenewal and reassignment of all licensed and nonlicensed personnel, contractual agreements and purchase orders, and approving or disapproving all claim dockets and the issuance of checks; in approving or disapproving employment contracts of superintendents, assistant superintendents or principals, the interim conservator shall not be required to comply with the time limitations prescribed in Sections 37-9-15 and 37-9-105;

(ii) Supervising the day-to-day activities of the district's staff, including reassigning the duties and responsibilities of personnel in a manner which, in the determination of the conservator, will best suit the needs of the district;

(iii) Reviewing the district's total financial obligations and operations and making recommendations to the district for cost savings, including, but not limited to, reassigning the duties and responsibilities of staff;

(iv) Attending all meetings of the district's school board and administrative staff;

(v) Approving or disapproving all athletic, band and other extracurricular activities and any matters related to those activities;

(vi) Maintaining a detailed account of recommendations made to the district and actions taken in response to those recommendations;

(vii) Reporting periodically to the State Board of Education on the progress or lack of progress being made in the district to improve the district's impairments during the state of emergency; and

(viii) Appointing a parent advisory committee, comprised of parents of students in the school district that may make recommendations to the conservator concerning the administration, management and operation of the school district.

Except when, in the determination of the State Board of Education, the school district's impairment is related to a lack of financial resources, the cost of the salary of the conservator and any other actual and necessary costs related to the conservatorship paid by the State Department of Education shall be reimbursed by the local school district from funds other than adequate education program funds. The department shall submit an itemized statement to the superintendent of the local school district for reimbursement purposes, and any unpaid balance may be withheld from the district's adequate education program funds.

At the time that the Governor, in accordance with the request of the State Board of Education, declares that the state of emergency no longer exists in a school district, the powers and responsibilities of the interim conservator assigned to the district shall cease.

(b) In order to provide loans to school districts under a state of emergency or under conservatorship that have impairments related to a lack of financial resources, the School District Emergency Assistance Fund is created as a special fund in the State Treasury into which monies may be transferred or appropriated by the Legislature from any available public education funds. Funds in the School District Emergency Assistance Fund up to a maximum balance of Three Million Dollars (\$3,000,000.00) annually shall not lapse but shall be available for expenditure in subsequent years subject to approval of the State Board of Education. Any amount in the fund in excess of Three Million Dollars (\$3,000,000.00) at the end of the fiscal year shall lapse into the State General Fund or the Education Enhancement Fund, depending on the source of the fund.

The State Board of Education may loan monies from the School District Emergency Assistance Fund to a school district that is under a state of emergency or under conservatorship, in those amounts, as determined by the board, that are necessary to correct the district's impairments related to a lack of financial resources. The loans shall be evidenced by an agreement between the school district and the State Board of Education and shall be repayable in principal, without necessity of interest, to the School District Emergency Assistance Fund, by the school district from any allowable funds that are available. The total amount loaned to the district shall be due and payable within five (5) years after the impairments related to a lack of financial resources are corrected. If a school district fails to make payments on the loan in accordance with the terms of the agreement between the district and the State Board of Education, the State Department of Education, in accordance with rules and regulations established by the State Board of Education, may withhold that district's adequate education program funds in an amount and manner that will effectuate repayment consistent with the terms of the agreement; the funds withheld by the department shall be deposited into the School District Emergency Assistance Fund.

The State Board of Education shall develop a protocol that will outline the performance standards and requisite time line deemed necessary for extreme emergency measures. If the State Board of Education determines that an extreme emergency exists, simultaneous with the powers exercised in this subsection, it shall take immediate action against all parties responsible for the affected school districts having been determined to be in an extreme emergency. The action shall include, but not be limited to, initiating civil actions to recover funds and criminal actions to account for criminal activity. Any funds recovered by the State Auditor or the State Board of Education from the surety bonds of school officials or from any civil action brought under this subsection shall be applied toward the repayment of any loan made to a school district hereunder.

(15) If a majority of the membership of the school board of any school district resigns from office, the State Board of Education shall be authorized to assign an interim conservator, who shall be responsible for the administration, management and operation of the school district until the time as new board

members are selected or the Governor declares a state of emergency in that school district under subsection (11), whichever occurs first. In that case, the State Board of Education, acting through the interim conservator, shall have all powers which were held by the previously existing school board, and may take any action as prescribed in Section 37-17-13 and/or one or more of the actions authorized in this section.

(16)(a) If the Governor declares a state of emergency in a school district, the State Board of Education may take all such action pertaining to that school district as is authorized under subsection (11) or (14) of Section 37-17-6, including the appointment of an interim conservator. The State Board of Education shall also have the authority to issue a written request with documentation to the Governor asking that the office of the superintendent of the school district be subject to recall. If the Governor declares that the office of the superintendent of the school district is subject to recall, the local school board or the county election commission, as the case may be, shall take the following action:

(i) If the office of superintendent is an elected office, in those years in which there is no general election, the name shall be submitted by the State Board of Education to the county election commission, and the county election commission shall submit the question at a special election to the voters eligible to vote for the office of superintendent within the county, and the special election shall be held within sixty (60) days from notification by the State Board of Education. The ballot shall read substantially as follows:

“Shall County Superintendent of Education _____ (here the name of the superintendent shall be inserted) of the _____ (here the title of the school district shall be inserted) be retained in office? Yes _____ No _____”

If a majority of those voting on the question votes against retaining the superintendent in office, a vacancy shall exist which shall be filled in the manner provided by law; otherwise, the superintendent shall remain in office for the term of that office, and at the expiration of the term shall be eligible for qualification and election to another term or terms.

(ii) If the office of superintendent is an appointive office, the name of the superintendent shall be submitted by the president of the local school board at the next regular meeting of the school board for retention in office or dismissal from office. If a majority of the school board voting on the question vote against retaining the superintendent in office, a vacancy shall exist which shall be filled as provided by law, otherwise the superintendent shall remain in office for the duration of his employment contract.

(b) The State Board of Education may issue a written request with documentation to the Governor asking that the membership of the school board of the school district shall be subject to recall. Whenever the Governor declares that the membership of the school board is subject to recall, the county election commission or the local governing authorities, as the case may be, shall take the following action:

(i) If the members of the local school board are elected to office, in those years in which the specific member's office is not up for election, the name of the school board member shall be submitted by the State Board of Education to the county election commission, and the county election commission at a special election shall submit the question to the voters eligible to vote for the particular member's office within the county or school district, as the case may be, and the special election shall be held within sixty (60) days from notification by the State Board of Education. The ballot shall read substantially as follows:

"Members of the _____ (here the title of the school district shall be inserted) School Board who are not up for election this year are subject to recall because of the school district's failure to meet critical accountability standards as defined in the letter of notification to the Governor from the State Board of Education. Shall the member of the school board representing this area, _____ (here the name of the school board member holding the office shall be inserted), be retained in office? Yes _____ No _____"

If a majority of those voting on the question vote against retaining the member of the school board in office, a vacancy in that board member's office shall exist, which shall be filled in the manner provided by law; otherwise, the school board member shall remain in office for the term of that office, and at the expiration of the term of office, the member shall be eligible for qualification and election to another term or terms of office. However, if a majority of the school board members are recalled in the special election, the Governor shall authorize the board of supervisors of the county in which the school district is situated to appoint members to fill the offices of the members recalled. The board of supervisors shall make those appointments in the manner provided by law for filling vacancies on the school board, and the appointed members shall serve until the office is filled at the next regular special election or general election.

(ii) If the local school board is an appointed school board, the name of all school board members shall be submitted as a collective board by the president of the municipal or county governing authority, as the case may be, at the next regular meeting of the governing authority for retention in office or dismissal from office. If a majority of the governing authority voting on the question vote against retaining the board in office, a vacancy shall exist in each school board member's office, which shall be filled as provided by law; otherwise, the members of the appointed school board shall remain in office for the duration of their term of appointment, and those members may be reappointed.

(iii) If the local school board is comprised of both elected and appointed members, the elected members shall be subject to recall in the manner provided in subparagraph (i) of this subsection, and the appointed members shall be subject to recall in the manner provided in subparagraph (ii).

(17) Beginning with the school district audits conducted for the 1997-1998 fiscal year, the State Board of Education, acting through the Commission on

School Accreditation, shall require each school district to comply with standards established by the State Department of Audit for the verification of fixed assets and the auditing of fixed assets records as a minimum requirement for accreditation.

(18) Before December 1, 1999, the State Board of Education shall recommend a program to the Education Committees of the House of Representatives and the Senate for identifying and rewarding public schools that improve or are high performing. The program shall be described by the board in a written report, which shall include criteria and a process through which improving schools and high-performing schools will be identified and rewarded.

The State Superintendent of Public Education and the State Board of Education also shall develop a comprehensive accountability plan to ensure that local school boards, superintendents, principals and teachers are held accountable for student achievement. A written report on the accountability plan shall be submitted to the Education Committees of both houses of the Legislature before December 1, 1999, with any necessary legislative recommendations.

(19) Before January 1, 2008, the State Board of Education shall evaluate and submit a recommendation to the Education Committees of the House of Representatives and the Senate on inclusion of graduation rate and dropout rate in the school level accountability system.

(20) If a local school district is determined as failing and placed into conservatorship for reasons authorized by the provisions of this section, the conservator appointed to the district shall, within forty-five (45) days after being appointed, present a detailed and structured corrective action plan to move the local school district out of conservatorship status to the local school board and local superintendent of education if they have not been removed by the conservator, or if the board and superintendent have been removed, to the local governing authority of the municipality or county in which the school district under conservatorship is located. A copy of the conservator's corrective action plan shall also be filed with the State Board of Education.

SOURCES: Laws, 1982, Ex Sess, ch. 17, § 12; Laws, 1985, ch. 398; Laws, 1991, ch. 471, § 1; Laws, 1994, ch. 581, § 7; Laws, 1996, ch. 302, § 1; Laws, 1997, ch. 386, § 3; Laws, 1997, ch. 336, § 1; Laws, 1998, ch. 497, § 3; Laws, 1999, ch. 421, § 3; Laws, 2000, ch. 533, § 6; Laws, 2000, ch. 610, §§ 6, 7; Laws, 2005, 5th Ex Sess, ch. 2, § 1; Laws, 2007, ch. 518, § 1; Laws, 2009, ch. 516, § 3; Laws, 2010, ch. 420, § 1; Laws, 2011, ch. 442, § 5; Laws, 2011, ch. 515, § 1; Laws, 2012, ch. 525, § 1; Laws, 2012, ch. 563, § 1, eff from and after July 1, 2012.

Editor's Note — This section is being set out to correct an error in the 2012 Cumulative Supplement.

CHAPTER 26

State Court Education Fund

§ 37-26-11. Children's Advocacy Centers Fund created.

Editor's Note — Laws of 2012, ch. 554, § 6 provides:

"SECTION 6. During fiscal year 2013, the following agencies shall have the authority to receive, budget and expend the following amounts generated from the assessments enacted in House Bill No. 878, 2012 Regular Session [Chapter 554, Laws of 2012]:

"University of Mississippi Medical Center for the	
Children's Justice Center	\$750,000.00
"Board of Trustees of State Institutions of	
Higher Learning for the DuBard School	
for Language Disorders	\$300,000.00
"Attorney General's office for the Children's Advocacy	
Centers of Mississippi	\$650,000.00
"Attorney General's office for the Motorcycle	
Officers Training Program	\$50,000.00

"The above listed escalations shall be done in accordance with the rules and regulations of the Department of Finance and Administration in a manner consistent with the escalation of federal funds."

CHAPTER 27

Agricultural High Schools

SEC.

37-27-79. Report and recommendations for consolidation of agricultural high schools; abolition of agricultural high school pursuant to petition; election.

§ 37-27-79. Report and recommendations for consolidation of agricultural high schools; abolition of agricultural high school pursuant to petition; election.

(1) The State Board of Education shall review and develop a report relating to the need for a separate board of trustees and separate administrative office for the Coahoma Agricultural High School, the Forrest Agricultural High School and the Hinds Agricultural High School and shall submit this finding with recommendations for any necessary legislation to the Chairmen of the Senate and House Education Committees on or before December 1, 2012, for consideration in the 2013 Regular Session. Said report shall include any necessary recommendations for the consolidation and transfer of administrative offices, transfer of real and personal property, and transfer of students from such agricultural high school to the appropriate school district.

(2) Any agricultural high school in this state (whether maintained by one (1) county or more than one (1) county) may be abolished when twenty percent (20%) of the qualified electors residing in such county or counties shall file a petition with the board of supervisors or boards of supervisors of such county or counties, and request that such school be abolished. Thereupon, the

question shall be submitted to an election of the qualified electors of the county or counties within not less than thirty (30) days nor more than sixty (60) days after the next meeting of the board of supervisors or boards of supervisors after the filing of the petition. At such election said electors may vote for abolishing the agricultural high school or against abolishing the agricultural high school. If a majority of the votes cast in such election be in favor of abolishing such school, then such school shall be abolished. If less than a majority of those voting fail to vote for abolishing such school then it shall not be abolished but shall be supported and maintained as now provided by law. When an election is called under this section and the school is not abolished, then another election cannot be held for a period of two (2) years.

SOURCES: Codes, 1930, § 6687; 1942, § 6467; Laws, 1930, ch. 81; Laws, 1934, ch. 262; Laws, 2012, ch. 551, § 3, eff September 10, 2012 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor’s Note — By letter dated September 10, 2012, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2012, ch. 551.

CHAPTER 115

University of Mississippi

UNIVERSITY OF MISSISSIPPI MEDICAL CENTER

§ 37-115-43. Authority to create Center of Excellence; purpose; programs, services, major research initiatives; Children’s Justice Center Fund created.

Editor’s Note — Laws of 2012, ch. 554, § 6 provides:
“SECTION 6. During fiscal year 2013, the following agencies shall have the authority to receive, budget and expend the following amounts generated from the assessments enacted in House Bill No. 878, 2012 Regular Session [Chapter 554, Laws of 2012]:
“University of Mississippi Medical Center for the
Children’s Justice Center\$750,000.00
“Board of Trustees of State Institutions of
Higher Learning for the DuBard School
for Language Disorders\$300,000.00
“Attorney General’s office for the Children’s Advocacy
Centers of Mississippi\$650,000.00
“Attorney General’s office for the Motorcycle
Officers Training Program\$50,000.00
“The above listed escalations shall be done in accordance with the rules and regulations of the Department of Finance and Adminstration in a manner consistent with the escalation of federal funds.”
This note was set out to correct an error in the 2012 Cumulative Supplement.

CHAPTER 119

University of Southern Mississippi

§ 37-119-11. DuBard School for Language Disorders Fund created.

Editor's Note — Laws of 2012, ch. 554, § 6 provides:

“SECTION 6. During fiscal year 2013, the following agencies shall have the authority to receive, budget and expend the following amounts generated from the assessments enacted in House Bill No. 878, 2012 Regular Session [Chapter 554, Laws of 2012]:

“University of Mississippi Medical Center for the

Children's Justice Center\$750,000.00

“Board of Trustees of State Institutions of

Higher Learning for the DuBard School

for Language Disorders\$300,000.00

“Attorney General's office for the Children's Advocacy

Centers of Mississippi\$650,000.00

“Attorney General's office for the Motorcycle

Officers Training Program\$50,000.00

“The above listed escalations shall be done in accordance with the rules and regulations of the Department of Finance and Administration in a manner consistent with the escalation of federal funds.”

This note was set out to correct an error in the 2012 Cumulative Supplement.

TITLE 41

PUBLIC HEALTH

CHAPTER 7

Hospital and Health Care Commissions

HEALTH CARE CERTIFICATE OF NEED LAW OF 1979

§ 41-7-191. Certificate of need; activities for which certificate is required.

JUDICIAL DECISIONS

3. Certificate of need granted.

Mississippi Department of Health (DOH) properly approved a certificate of need (CON) for a behavioral health center to add twenty adolescent psychiatric beds in Warren County, pursuant to Miss. Code Ann. § 41-7-191(4)(a)(iii), because a previously approved CON for such beds was never acted upon and, therefore, the ex-

ception to the moratorium on adolescent psychiatric beds under § 41-7-191(4)(a)(iii) remained available to the DOH; the DOH's interpretation of § 41-7-191(4)(a)(iii) was reasonable. *Diamond Grove Ctr., LLC v. Miss. State Dep't of Health*, 98 So. 3d 1068 (Miss. Oct. 11, 2012).

§ 41-7-201. Direct appeal of final order pertaining to certificate of need to the Mississippi Supreme Court.

JUDICIAL DECISIONS

3. No reversible error.

Mississippi Department of Health (DOH) properly approved a certificate of need (CON) for a behavioral health center to add twenty adolescent psychiatric beds in Warren County, pursuant to Miss. Code Ann. § 41-7-191(4)(a)(iii), because a previously approved CON for such beds was never acted upon and, therefore, the ex-

ception to the moratorium on adolescent psychiatric beds under § 41-7-191(4)(a)(iii) remained available to the DOH; the DOH's interpretation of § 41-7-191(4)(a)(iii) was reasonable. *Diamond Grove Ctr., LLC v. Miss. State Dep't of Health*, 98 So. 3d 1068 (Miss. Oct. 11, 2012).

CHAPTER 29

Poisons, Drugs and Other Controlled Substances

ARTICLE 3.

UNIFORM CONTROLLED SUBSTANCES LAW.

§ 41-29-139. Prohibited acts; penalties.

JUDICIAL DECISIONS

I. IN GENERAL.

4. Guilty plea.

III. PROSECUTION; PROCEDURE.

- 11. Indictment.
- 12.5. Multiple counts.
- 14. Jury instructions.
- 15. Sentence.
- 15.5. Forfeiture.

IV. EVIDENCE.

- 17. Admissibility — generally.
- 19. —Hearsay.
- 22. Sufficient evidence—possession.

I. IN GENERAL.

4. Guilty plea.

Summary dismissal of a post-conviction motion under Miss. Code Ann. § 99-39-11(2) was proper as the inmate's due process rights were not violated and his guilty plea was knowing, intelligent, and voluntary where: (1) the indictment was not amended, and charged the inmate with possessing more than two grams but less than ten grams of cocaine with the intent to sell under Miss. Code Ann. § 41-29-139(a)(1); (2) the trial court thoroughly advised the inmate of his rights, the nature and elements of the charge against him, and the consequences of his guilty plea; (3) there was a factual basis for the plea under Miss. Unif. Cir. & Cty. R. 8.04(A)(3); (4) the trial court was satisfied that the inmate understood the trial court's explanations, and waived his rights as a criminal defendant; and (5) the trial court was also satisfied with the inmate's and defense counsel's responses as to the inmate's alleged mental illness.

Hunt v. State, 99 So. 3d 269 (Miss. Ct. App. Oct. 16, 2012).

III. PROSECUTION; PROCEDURE.

11. Indictment.

Appellant, who pled guilty to sale of a controlled substance in violation of Miss. Code Ann. § 41-29-139(a)(1), was not entitled to postconviction relief on grounds the indictment was defective for not stating the name of the buyer to whom he sold cocaine, as § 41-29-139(a)(1) did not list the identity of the buyer as an essential element of the crime. Garrett v. State, — So. 3d —, 2012 Miss. App. LEXIS 483 (Miss. Ct. App. Aug. 7, 2012).

12.5. Multiple counts.

Defendant's right to protection against double jeopardy was not violated because he was subject to multiple punishments for possession with intent to distribute five separate controlled substances, because to obtain a verdict on each count, the State was required to prove beyond a reasonable doubt that each of the substances found in defendant's house was in fact a controlled substance under Miss. Code Ann. § 41-29-139 (Rev. 2009), and that defendant possessed and intended to sell each drug. Watkins v. State, 90 So. 3d 1283 (Miss. Aug. 16, 2012), modified by 2012 Miss. LEXIS 624 (Miss. Dec. 13, 2012).

14. Jury instructions.

Jury was properly instructed on the elements of simple possession under Miss. Code Ann. § 41-29-139(c) because the instructions tracked the language of the simple-possession statute; the instructions were prepared by counsel for defendant. Campbell v. State, — So. 3d —, 2012

Miss. App. LEXIS 608 (Miss. Ct. App. Oct. 2, 2012).

Trial court properly gave a jury instruction on possession as a lesser included offense under Miss. Code Ann. § 41-29-139(c) as a possession offense was an offense necessarily committed along with the offense charged of possession with intent; there was no additional element of proof involved in a possession case versus a possession with intent case, and weight was in the statute for the purpose of sentencing options for the judge, not the jury. *Gregory v. State*, 96 So. 3d 54 (Miss. Ct. App. 2012).

15. Sentence.

Defendant's 126-year sentence for selling cocaine, methamphetamine, and marijuana was not disproportionate to the crimes because the sentence was statutorily authorized, as (1) Miss. Code Ann. § 41-29-139(b)(1) and (3) permitted maximum sentences of 30 years and 3 years, (2) Miss. Code Ann. § 99-19-81 required a maximum sentence, as defendant was convicted of a third felony, (3) the doubling of each maximum sentence was authorized by Miss. Code Ann. § 41-29-147, based on defendant's prior drug conviction, and (4) Miss. Code Ann. § 99-19-21 authorized the court to order that the sentences run consecutively. *Mosley v. State*, 104 So. 3d 839 (Miss. 2012).

15.5. Forfeiture.

Trial court erred when it granted the forfeiture of a vehicle used by a defendant and owned by defendant's sister in which drugs were found. Since the indictment and the Mississippi Crime Laboratory's report clearly established that the amount of marijuana recovered in the search of the vehicle was 238.6 grams, the proper charge was under Miss. Code Ann. § 41-29-139(c)(2)(C), not under § 41-29-139(c)(2)(D); thus, as a matter of law, the quantity of marijuana recovered and charged was statutorily excluded from forfeiture under Miss. Code Ann. § 41-29-153(a)(4)(D). *Jefferson v. City of Kosciusko*, — So. 2d —, 2013 Miss. App. LEXIS 167 (Miss. Ct. App. Apr. 9, 2013).

IV. EVIDENCE.

17. Admissibility — generally.

Circuit court did not err in admitting defendant's prior drug-sale convictions

into evidence because the prior drug convictions were properly admitted under Miss. R. Evid. 404(b) to show defendant's intent to sell; the circuit court conducted a proper Miss. R. Evid. 403 balancing test. *Campbell v. State*, — So. 3d —, 2012 Miss. App. LEXIS 608 (Miss. Ct. App. Oct. 2, 2012).

Though a laboratory supervisor who testified that a substance was cocaine was not involved in the actual testing, he had reviewed the report for accuracy and signed it as the case technical reviewer, and was sufficiently involved with the analysis and overall process that his testimony did not violate defendant's right of confrontation under the Sixth Amendment, U.S. Const. amend. VI. *Grim v. State*, 102 So. 3d 1073 (Miss. 2012).

19. —Hearsay.

While an analyst's supervisor was not involved in the testing of a substance that proved to be cocaine, as he was sufficiently involved with the analysis and had intimate knowledge about it and the report prepared by the analyst, his testimony did not violate defendant's right of confrontation under U.S. Const. amend. VI. *Jenkins v. State*, 102 So. 3d 1063 (Miss. 2012).

22. Sufficient evidence—possession.

Circuit court properly denied defendant's motion for new trial because the evidence did not preponderate heavily against the jury's decision to find defendant guilty of possession of cocaine with the intent to distribute and possession of marijuana with the intent to distribute; a police officer found cocaine and marijuana in defendant's possession. *Campbell v. State*, — So. 3d —, 2012 Miss. App. LEXIS 608 (Miss. Ct. App. Oct. 2, 2012).

Sufficient evidence supported conviction of constructive possession of methamphetamine, Miss. Code Ann. § 41-29-139(c)(1) because defendant was found standing over a night stand in a hotel room that bore a bag containing the methamphetamine, and admitted that he had picked up the bag and looked at it, and knew that the substance was methamphetamine or cocaine; defendant was the only one in the room. *Fontenot v. State*, — So. 3d —, 2012 Miss. App. LEXIS 615 (Miss. Ct. App. Oct. 9, 2012).

§ 41-29-147. Second and subsequent offenses.

JUDICIAL DECISIONS

2. Sentence.

Defendant's 126-year sentence for selling cocaine, methamphetamine, and marijuana was not disproportionate to the crimes because the sentence was statutorily authorized, as (1) Miss. Code Ann. § 41-29-139(b)(1) and (3) permitted maximum sentences of 30 years and 3 years, (2) Miss. Code Ann. § 99-19-81 required a

maximum sentence, as defendant was convicted of a third felony, (3) the doubling of each maximum sentence was authorized by Miss. Code Ann. § 41-29-147, based on defendant's prior drug conviction, and (4) Miss. Code Ann. § 99-19-21 authorized the court to order that the sentences run consecutively. *Mosley v. State*, 104 So. 3d 839 (Miss. 2012).

§ 41-29-150. Participation in drug rehabilitation programs; probation; expunction of record upon application to court.

JUDICIAL DECISIONS

1. In general.

Miss. Code Ann. § 41-29-150(d)(2) did not apply because defendant's charges were never dismissed. defendant violated his probation by failing to report to his probation officer, failing to pay his super-

vision fees, and failing to avoid injurious and vicious habits, and the trial court adjudicated his guilt and sentenced him to a period of incarceration. *Cassidy v. State*, — So. 2d —, 2013 Miss. App. LEXIS 123 (Miss. Ct. App. Mar. 5, 2013).

RESEARCH REFERENCES

ALR. Judicial Expunction of Criminal Record of Convicted Adult Under Statute — General Principles, and Expunction of Criminal Records Under Statutes Providing for Such Relief Where Criminal Proceeding Is Terminated in Favor of Defen-

dant, upon Completion of Probation, upon Suspended Sentence, and Where Expungement Relief Predicated upon Type, and Number, of Offenses. 69 A.L.R.6th 1

§ 41-29-153. Forfeitures.

JUDICIAL DECISIONS

5. Exclusions.

Trial court erred when it granted the forfeiture of a vehicle used by a defendant and owned by defendant's sister in which drugs were found. Since the indictment and the Mississippi Crime Laboratory's report clearly established that the amount of marijuana recovered in the search of the vehicle was 238.6 grams, the proper

charge was under Miss. Code Ann. § 41-29-139(c)(2)(C), not under § 41-29-139(c)(2)(D); thus, as a matter of law, the quantity of marijuana recovered and charged was statutorily excluded from forfeiture under Miss. Code Ann. § 41-29-153(a)(4)(D). *Jefferson v. City of Kosciusko*, — So. 2d —, 2013 Miss. App. LEXIS 167 (Miss. Ct. App. Apr. 9, 2013).

CHAPTER 67

Mississippi Individual On-Site Wastewater Disposal System Law

GENERAL PROVISIONS

§ 41-67-4. Duties and responsibilities of the Board of Health regarding individual on-site wastewater disposal systems [Repealed effective July 1, 2013].

Editor's Note — This section is being set out to correct an error in the catch line of the section that appears in the 2012 Cumulative Supplement.

TITLE 43

PUBLIC WELFARE

CHAPTER 19

Support of Natural Children

CHILD SUPPORT UNIT

§ 43-19-34. Stipulated agreement for modification of support order; Child Support Unit authorized to send motion and notice of intent to modify; reviews for possible modification to be conducted on 3-year cycle; only upward adjustments to be ordered retroactively; noncustodial parent's arrearage not to bar review or downward modification.

JUDICIAL DECISIONS

1. Retroactive termination of support improper.
2. Retroactive upward modification of support.

1. Retroactive termination of support improper.

Under Miss. Code Ann. § 43-19-34(4), a father's child-support obligations continued to vest while his counter-complaint for modification was pending; therefore, the trial court erred in terminating his support obligation for his oldest child retroactive to the date of his counter-com-

plaint. *A.M.L. v. J.W.L.*, 98 So. 3d 1001 (Miss. 2012).

2. Retroactive upward modification of support.

Under Miss. Code Ann. § 43-19-34(4), an upward retroactive modification of a father's child support obligation was permissible, but not mandatory; therefore, the trial court did not clearly err in declining to make his increased support retroactive to the date of the mother's complaint for modification. *A.M.L. v. J.W.L.*, 98 So. 3d 1001 (Miss. 2012).

§ 43-19-48. Use of data match systems by Department of Human Services for noncustodial parents delinquent in child support payments.

JUDICIAL DECISIONS

1. Challenge to encumbrance.

"Mistake of identity" language in Miss. Code Ann. § 43-19-48(5) did not apply to an obligee spouse, and the obligee spouse was not restricted to filing under the 45 day deadline in Miss. Code Ann. § 43-19-48, when an encumbrance was placed on joint accounts which the obligee spouse owned with the estranged obligor spouse when the obligor spouse owed child sup-

port. However, a letter to the Mississippi Department of Human Services by the obligee spouse's attorney was not the equivalent to a sworn declaration filed according to Miss. Code Ann. § 43-19-48, as it was too little, too late. *Miss. Dep't of Human Servs. v. Lang*, — So. 2d —, 2013 Miss. App. LEXIS 198 (Miss. Ct. App. Apr. 23, 2013).

CHILD SUPPORT AWARD GUIDELINES

§ 43-19-101. Child support award guidelines.

JUDICIAL DECISIONS

3. Guidelines; deviation from.
4. Findings of fact.
6. Modification of support.

3. Guidelines; deviation from.

Chancellor did not exceed his authority in deviating from the statutory child support guidelines, Miss. Code Ann. § 43-19-101(2), and awarding \$ 400 per month because the chancellor considered the total available assets of the parties and the minor child, as well as the shared parenting arrangement, and the child's current level of self-sufficiency, and found the application of the statutory guidelines was not reasonable; the parties' minor child had the use of a vehicle, an almost completed undergraduate degree, personal assets, and three bank accounts. *Dogan v. Dogan*, 98 So. 3d 1115 (Miss. Ct. App. Oct. 9, 2012).

4. Findings of fact.

While a chancellor erred in including rentals in a husband's income, the error

was harmless as the chancellor discussed and made specific findings for child support under Miss. Code Ann. §§ 43-19-101, 43-19-103 and properly relied on the parties' Miss. Unif. Ch. Ct. R. 8.05 disclosure forms and other documentary evidence. *Collins v. Collins*, — So. 3d —, 2012 Miss. App. LEXIS 521 (Miss. Ct. App. Aug. 21, 2012).

6. Modification of support.

Substantial evidence supported the chancery court's decision not to increase a father's monthly child-support payment, Miss. Code Ann. § 43-19-101(1), despite an increase in the father's income because the father had the financial burden of traveling out-of-state to exercise his visitation rights with the children. *Quinones v. Garcia*, 97 So. 3d 109 (Miss. Ct. App. 2012).

CHAPTER 21

Youth Court

ORGANIZATION, ADMINISTRATION AND OPERATION

§ 43-21-105. Definitions.

JUDICIAL DECISIONS

I. Under Current Law.

9. Miscellaneous.

I. Under Current Law.

9. Miscellaneous.

Trial judge abused his discretion in declining to recuse himself in a prosecution for aggravated assault and forcible rape of child, since he had served as county prosecuting attorney in an earlier youth-court shelter hearing regarding the child's cus-

tody as a result of the events giving rise to the criminal charges, and 1) the threshold issue in that hearing was whether the complainant was an "abused child" under Miss. Code Ann. § 43-21-105(m), which went to the heart of the issue of defendant's guilt; 2) the judge might have personal knowledge of disputed evidentiary facts concerning the criminal case due to his participation in the youth-court shelter hearing. *Miller v. State*, 94 So. 3d 1120 (Miss. 2012).

TITLE 45
PUBLIC SAFETY AND GOOD ORDER

CHAPTER 6

Law Enforcement Officers Training Program

§ 45-6-21. Motorcycle Officers Training Program Fund created.

Editor's Note — Laws of 2012, ch. 554, § 6 provides:

“SECTION 6. During fiscal year 2013, the following agencies shall have the authority to receive, budget and expend the following amounts generated from the assessments enacted in House Bill No. 878, 2012 Regular Session [Chapter 554, Laws of 2012]:

“University of Mississippi Medical Center for the Children’s Justice Center	\$750,000.00
“Board of Trustees of State Institutions of Higher Learning for the DuBard School for Language Disorders	\$300,000.00
“Attorney General’s office for the Children’s Advocacy Centers of Mississippi	\$650,000.00
“Attorney General’s office for the Motorcycle Officers Training Program	\$50,000.00

“The above listed escalations shall be done in accordance with the rules and regulations of the Department of Finance and Administration in a manner consistent with the escalation of federal funds.”

This note was set out to correct an error in the 2012 Cumulative Supplement.

CHAPTER 33

Registration of Sex Offenders

§ 45-33-21. Legislative findings and declaration of purpose.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of State Sex Offender Registration Statutes Concerning Level of Classification — Initial Classification Determination. 65 A.L.R.6th 1

Validity, Construction, and Application of State Sex Offender Registration Statutes Concerning Level of Classification —

Claims for Downward Departure. 66 A.L.R.6th 1

Validity, Construction, and Application of State Sex Offender Registration Statutes Concerning Level of Classification — Claims Challenging Upward Departure. 67 A.L.R.6th 1

§ 45-33-25. Registration with Mississippi Department of Public Safety of persons convicted of registrable offenses residing, employed or attending school in Mississippi; registration information; prohibition against registered sex offenders living within specified distance of schools, certain child care facilities or agencies or playgrounds or other recreational facilities utilized by children.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of State Sex Offender Registration Statutes Concerning Level of Classification — Initial Classification Determination. 65 A.L.R.6th 1

Validity, Construction, and Application of State Sex Offender Registration Statutes Concerning Level of Classification —

Claims for Downward Departure. 66 A.L.R.6th 1

Validity, Construction, and Application of State Sex Offender Registration Statutes Concerning Level of Classification — Claims Challenging Upward Departure. 67 A.L.R.6th 1

TITLE 47

PRISONS AND PRISONERS; PROBATION AND PAROLE

CHAPTER 5

Correctional System

OFFENDERS

§ 47-5-138. Earned time allowances; earned-release supervision; promulgations of rules and regulations; forfeiture generally; release of offender; phase-out of earned time release.

JUDICIAL DECISIONS

1. In general.
5. Revocation.

1. In general.

As the allegations in an inmate's motion for postconviction relief were contradicted by his prior sworn statements, and his claims had no arguable basis in law or in fact and had no realistic chance for success, the postconviction court did not abuse its discretion in finding the motion frivolous and ordering the forfeiture of 60 days of his earned time under Miss. Code Ann. § 47-5-138. *Bell v. State*, 102 So. 3d 297 (Miss. Ct. App. 2012).

5. Revocation.

Although an inmate was a candidate for sanctions under Miss. Code Ann. § 47-5-138(3)(a) and (b) for filing successive, frivolous motions for post-conviction re-

lief, such sanctions would have no effect because he had been sentenced as a habitual offender under Miss. Code Ann. § 99-19-81, and thus had no earned time to forfeit. *Clay v. State*, — So. 2d —, 2013 Miss. App. LEXIS 147 (Miss. Ct. App. Apr. 2, 2013).

Denial of defendant's motion for post-conviction relief, in which defendant challenged the revocation of his earned-release supervision (ERS), pursuant to Miss. Code Ann. § 47-5-138(2), was clearly erroneous because defendant was never indicted for the conduct upon which the revocation was based, and at the revocation hearing, the State did not present evidence to prove defendant had violated an ERS rule and did not dispute any evidence that defendant had acted in self-defense. *Morris v. State*, 66 So. 3d 716 (Miss. Ct. App. June 28, 2011).

§ 47-5-139. Certain inmates ineligible for earned time allowance; commutation to be based on total term of sentences; forfeiture of earned time in event of escape.

JUDICIAL DECISIONS

- 3.5. Eligibility for release.
- 4.5. Conditional release.

3.5. Eligibility for release.

Inmate did not receive ineffective assistance of counsel as: (1) the plea petition,

the guilty-plea colloquy, and the post-conviction relief evidentiary hearing, taken together, reflected that defense counsel correctly advised the inmate of the life sentence for murder, his potential for release at age 65, and the correct sentencing

statutory provision, Miss. Code Ann. § 47-7-3(1)(f), which prohibited parole eligibility because the inmate pled guilty to murder and was sentenced to life imprisonment; (2) the inmate had the potential for release Miss. Code Ann. § 47-5-139(1)(a) at age 65 after serving 15 years by petitioning for early release at or after age 65; (3) the inmate was 36 years old at the time of his guilty plea and sentence; (4) upon reaching age 65, the inmate would have served substantially more than 15 years; and (5) the inmate admitted being advised of his eligibility to be released at age 65. *Higginbotham v. State*, — So. 3d —, 2012 Miss. App. LEXIS 595 (Miss. Ct. App. Sept. 25, 2012).

4.5. Conditional release.

Miss. Code Ann. § 97-3-21 was not unconstitutionally vague and did not apply to the inmate where the inmate confused parole with conditional release as: (1) Miss. Code Ann. § 47-7-3(1)(f) prohibited parole for an inmate sentenced to life

under Miss. Code Ann. § 99-19-101 for capital offenses; (2) since the inmate pled guilty to murder, carrying a life sentence, he was convicted of an other capital offense under Miss. Code Ann. § 1-3-4; and (3) the inmate was eligible to petition for conditional release at age 65 under Miss. Code Ann. § 47-5-139(1)(a). *Higginbotham v. State*, — So. 3d —, 2012 Miss. App. LEXIS 595 (Miss. Ct. App. Sept. 25, 2012).

Defendant's guilty plea to murder under Miss. Code Ann. § 97-3-19(1)(a) was knowing, voluntary, and intelligent as defense counsel correctly advised the inmate that when he reached the 65, he could petition to be released from custody under Miss. Code Ann. § 47-5-139(1)(a); while counsel might have used the term "parole eligibility" rather than the correct term "conditional release," he correctly advised the inmate that he would be eligible for release at age 65. *Higginbotham v. State*, — So. 3d —, 2012 Miss. App. LEXIS 595 (Miss. Ct. App. Sept. 25, 2012).

§ 47-5-183. Department of Corrections may create a postconviction DNA database.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of State Statutes and Rules Governing Requests for Postconviction DNA Testing. 72 A.L.R.6th 227.

ADMINISTRATIVE REVIEW PROCEDURE

§ 47-5-801. Authority to adopt administrative review procedure.

JUDICIAL DECISIONS

1. Administrative review procedures.

Because Miss. Code Ann. § 47-5-1003(3) provided that reclassifying an inmate from house arrest was within the Department of Corrections' exclusive jurisdiction, and because an inmate had not exhausted the inmate's administrative

remedies in accordance with Miss. Code Ann. §§ 47-5-801, 47-5-803(2), the circuit court lacked jurisdiction to consider the inmate's postconviction motion. *Hollingsworth v. State*, 66 So. 3d 1254 (Miss. Ct. App. July 19, 2011).

§ 47-5-803. Procedure constitutes administrative remedies available to offenders for purpose of preserving cause of action against state.

JUDICIAL DECISIONS

3. Failure to exhaust administrative remedies.

Because Miss. Code Ann. § 47-5-1003(3) provided that reclassifying an inmate from house arrest was within the Department of Corrections' exclusive jurisdiction, and because an inmate had not

exhausted the inmate's administrative remedies in accordance with Miss. Code Ann. §§ 47-5-801, 47-5-803(2), the circuit court lacked jurisdiction to consider the inmate's postconviction motion. *Hollingsworth v. State*, 66 So. 3d 1254 (Miss. Ct. App. July 19, 2011).

INTENSIVE SUPERVISION PROGRAM; ELECTRONIC HOME DETENTION

§ 47-5-1003. Intensive supervision program; eligibility; procedure; time limits; program violations; notice to Department of Corrections; participation in program during term of probation; report on effectiveness of program [Repealed effective after June 30, 2014].

JUDICIAL DECISIONS

2. Jurisdiction.

Because Miss. Code Ann. § 47-5-1003(3) provided that reclassifying an inmate from house arrest was within the Department of Corrections' exclusive jurisdiction, and because an inmate had not exhausted the inmate's administrative

remedies in accordance with Miss. Code Ann. §§ 47-5-801, 47-5-803(2), the circuit court lacked jurisdiction to consider the inmate's postconviction motion. *Hollingsworth v. State*, 66 So. 3d 1254 (Miss. Ct. App. July 19, 2011).

CHAPTER 7

Probation and Parole

PROBATION AND PAROLE LAW

§ 47-7-3. Parole of prisoners; conditions for eligibility; determination of tentative hearing date; reconsideration of rejected applications after one year on convictions for nonviolent crimes.

JUDICIAL DECISIONS

1. In general; construction.
9. Ineffective assistance of counsel.

1. In general; construction.

Miss. Code Ann. § 97-3-21 was not unconstitutionally vague and did not apply to the inmate where the inmate confused parole with conditional release as: (1) Miss. Code Ann. § 47-7-3(1)(f) prohibited parole for an inmate sentenced to life under Miss. Code Ann. § 99-19-101 for capital offenses; (2) since the inmate pled guilty to murder, carrying a life sentence, he was convicted of a capital offense as defined in Miss. Code Ann. § 1-3-4; and (3) the inmate was eligible to petition for conditional release at age 65 under Miss. Code Ann. § 47-5-139(1)(a). *Higginbotham v. State*, — So. 3d —, 2012 Miss. App. LEXIS 595 (Miss. Ct. App. Sept. 25, 2012).

9. Ineffective assistance of counsel.

Inmate did not receive ineffective assistance of counsel as: (1) the plea petition,

the guilty-plea colloquy, and the post-conviction relief evidentiary hearing, taken together, reflected that defense counsel correctly advised the inmate of the life sentence for murder, his potential for release at age 65, and the correct sentencing statutory provision, Miss. Code Ann. § 47-7-3(1)(f), which prohibited parole eligibility because the inmate pled guilty to murder and was sentenced to life imprisonment; (2) the inmate had the potential for release Miss. Code Ann. § 47-5-139(1)(a) at age 65 after serving 15 years by petitioning for early release at or after age 65; (3) the inmate was 36 years old at the time of his guilty plea and sentence; (4) upon reaching age 65, the inmate would have served substantially more than 15 years; and (5) the inmate admitted being advised of his eligibility to be released at age 65. *Higginbotham v. State*, — So. 3d —, 2012 Miss. App. LEXIS 595 (Miss. Ct. App. Sept. 25, 2012).

§ 47-7-33. Power of court to suspend sentence and place defendant on probation; notice to Department of Corrections; support payments.

RESEARCH REFERENCES

ALR. Judicial Expunction of Criminal Record of Convicted Adult Under Statute—Expunction Under Statutes Addressing “First Offenders” and “Innocent Persons,” Where Conviction Was for Minor Drug or Other Offense, Where Indictment Has Not

Been Presented Against Accused or Accused Has been Released from Custody, and Where Court Considered Impact of *Nolle Prosequi*, Partial Dismissal, Pardon, Rehabilitation, and Lesser-Included Offenses. 70 A.L.R.6th 1.

TITLE 63

MOTOR VEHICLES AND TRAFFIC REGULATIONS

CHAPTER 3

Traffic Regulations and Rules of the Road

ARTICLE 7.

TRAFFIC SIGNS, SIGNALS AND MARKINGS.

§ 63-3-301. Adoption of uniform system of traffic-control devices.

JUDICIAL DECISIONS

1. Department not immune.

Mississippi Department of Transportation (MDOT) was not immune in a wrongful death claim alleging that a failure to place warning signs around a highway culvert, as required by Miss. Code Ann. § 65-21-1, resulted in an auto accident that caused the decedent's death because § 65-21-1 imposed a ministerial duty, and, as Miss. Code Ann. § 63-3-301 and Miss. Code Ann. § 63-3-303 included no language suggesting abrogation or repeal of § 65-21-1, that section-narrowly, pre-

cisely, and specifically requiring warning posts around culverts-remained in effect as an exception to the general rule of § 63-3-303 that the MDOT had discretion over such placement; Miss. Code Ann. § 65-21-1 controlled the specific issue of guide and warning posts around culverts, and § 63-3-303 controlled the discretionary placement of traffic devices that were not the subject of a specific statutory mandate. Miss. DOT v. Nosef, — So. 2d —, 2013 Miss. LEXIS 143 (Miss. Apr. 4, 2013).

§ 63-3-303. Placing and maintaining of traffic-control devices upon state and county highways; placement of devices upon such highways by local authorities.

JUDICIAL DECISIONS

1. In general.

Mississippi Department of Transportation (MDOT) was not immune in a wrongful death claim alleging that a failure to place warning signs around a highway culvert, as required by Miss. Code Ann. § 65-21-1, resulted in an auto accident that caused the decedent's death because § 65-21-1 imposed a ministerial duty, and, as Miss. Code Ann. § 63-3-301 and Miss. Code Ann. § 63-3-303 included no language suggesting abrogation or repeal of § 65-21-1, that section-narrowly, pre-

cisely, and specifically requiring warning posts around culverts-remained in effect as an exception to the general rule of § 63-3-303 that the MDOT had discretion over such placement; Miss. Code Ann. § 65-21-1 controlled the specific issue of guide and warning posts around culverts, and § 63-3-303 controlled the discretionary placement of traffic devices that were not the subject of a specific statutory mandate. Miss. DOT v. Nosef, — So. 2d —, 2013 Miss. LEXIS 143 (Miss. Apr. 4, 2013).

ARTICLE 13.

DRIVING ON RIGHT SIDE OF ROADWAY: OVERTAKING AND PASSING; FOLLOWING.

§ 63-3-619. Distances to be maintained between traveling vehicles.

JUDICIAL DECISIONS

7. Sufficiency of evidence.

Evidence was sufficient to convict appellant of tailgating, under Miss. Code Ann. § 63-3-619(1), because a police officer made it clear from the start that appellant's following a sport-utility vehicle so

closely was what drew his attention to appellant, and appellant offered no evidence to contradict the officer's testimony. *Barrow v. State*, — So. 2d —, 2013 Miss. App. LEXIS 170 (Miss. Ct. App. Apr. 9, 2013).

ARTICLE 15.

STARTING AND TURNING; SIGNALING.

§ 63-3-707. Requirements as to signalling of turns or stops.

JUDICIAL DECISIONS

4.5. Searches and seizures.

Defendant was legally stopped under the Fourth Amendment, U.S. Const. Amend. IV, and Miss. Const. Art. III, § 23 as: (1) he failed to use his turn signal and violated Miss. Code Ann. § 63-3-707, even though there was no imminent threat of a collision between his vehicle and an officer's vehicle that was traveling at a safe distance behind defendant's vehicle; (2) the subsequent searches of defendant and his vehicle were lawful; (3) defendant was

arrested for driving with a suspended license; (4) the glass pipes were found in a search incident to defendant's arrest; and (5) the inventory search of defendant's vehicle, during which the methamphetamine was discovered, was conducted according to police department policy and was limited to the areas of the vehicle where defendant's property could reasonably be expected to be found. *Melton v. State*, — So. 3d —, 2012 Miss. App. LEXIS 618 (Miss. Ct. App. Oct. 9, 2012).

ARTICLE 19.

STOPPING, STANDING AND PARKING.

§ 63-3-903. Stopping, standing or parking upon highway outside of business or residence districts.

JUDICIAL DECISIONS

8. Standing or stopped vehicle.

Where an injured motorist, who was experiencing chest discomfort, pulled his vehicle partly off the highway, but partly obstructed the right-hand lane of travel in

violation of Miss. Code Ann. § 63-3-903, the motorist's act was a proximate and contributing cause an accident, and the trial court did not err by allowing the jury to apportion fault. *Meka v. Grant Plumb-*

ing & Air Conditioning Co., 67 So. 3d 18
(Miss. Ct. App. June 28, 2011).

ARTICLE 25.

RECKLESS OR CARELESS DRIVING AND MISCELLANEOUS RULES.

§ 63-3-1213. Careless driving.

JUDICIAL DECISIONS

5. Evidence sufficient.

Sufficient evidence supported defendant's conviction for careless driving because a police sergeant, who responded to two independent calls from drivers who reported that defendant was driving carelessly, testified that defendant was kind of drifting from right to left, that it was

pretty obvious that defendant could not maintain control of defendant's vehicle to keep it in defendant's direct lane, and that defendant did not stop when the sergeant turned on the police car's blue lights and did not come to a complete stop at a stop sign. *McMurtry v. State*, 105 So. 3d 395 (Miss. Ct. App. 2012).

CHAPTER 7

Equipment and Identification

TAMPERING WITH OR ALTERATION OF ODOMETERS

§ 63-7-203. Offenses.

RESEARCH REFERENCES

ALR. Validity, Construction and Application of State Laws Concerning, Relating to, or Encompassing Disclosure of and Tampering with Motor Vehicle Odometer — Validity of Statutory Provisions, Construction of Statute and Particular Terms, and Remedies. 66 A.L.R.6th 351.

Validity, Construction, and Application of State Laws Concerning, Relating to, or Encompassing Disclosure of and Tampering with Motor Vehicle Odometer — Statutes of Limitation, Parties to Action, Evidentiary Matters, and Particular Violations of Statute. 67 A.L.R.6th 209.

CHAPTER 11

Implied Consent Law

§ 63-11-30. Operation of vehicle while under influence of intoxicating liquor or other substances impairing ability to operate vehicle or with blood alcohol concentrations above specified levels; penalties; granting of hardship driving privileges; concurrent running of suspensions; separate offense of endangering child by driving under influence; penalties.

JUDICIAL DECISIONS

7. Sufficiency of evidence.

Evidence was sufficient to convict appellant of driving under the influence, under Miss. Code Ann. § 63-11-30(1)(a), (c), because appellant admitted to having several drinks that night, a portable breathalyzer test (PBT) indicated that appellant was probably intoxicated, a police officer testified that appellant displayed signs of intoxication while performing the field-sobriety tests, and the signs from the tests, the PBT results, and the videotape all corroborated most of the officer's testimony and supported his belief that appellant was intoxicated. *Barrow v. State*, — So. 2d —, 2013 Miss. App. LEXIS 170 (Miss. Ct. App. Apr. 9, 2013).

Although defendant argued that the prosecution failed to prove beyond a reasonable doubt that defendant's breath-alcohol content was .08 percent or greater at the time that defendant was driving, because a doctor provided retrograde-extrapolation testimony that defendant's blood-alcohol content would have been .03 percent at the time of the traffic stop of defendant, the county court judge acted within its discretion when it found that the doctor's testimony was not credible. *McMurtry v. State*, 105 So. 3d 395 (Miss. Ct. App. 2012).

CHAPTER 17

Manufacture, Sales and Distribution

DISTRIBUTION AND SALES

§ 63-17-73. Offenses and penalties.

RESEARCH REFERENCES

ALR. Validity, Construction and Application of State Laws Concerning, Relating to, or Encompassing Disclosure of and Tampering with Motor Vehicle Odometer — Validity of Statutory Provisions, Construction of Statute and Particular Terms, and Remedies. 66 A.L.R.6th 351.

Validity, Construction, and Application of State Laws Concerning, Relating to, or Encompassing Disclosure of and Tampering with Motor Vehicle Odometer — Statutes of Limitation, Parties to Action, Evidentiary Matters, and Particular Violations of Statute. 67 A.L.R.6th 209.

TITLE 65

HIGHWAYS, BRIDGES AND FERRIES

CHAPTER 1

Transportation Department

ARTICLE 1.

IN GENERAL.

§ 65-1-65. Maintenance.

JUDICIAL DECISIONS

2. Immunity.

Mississippi Department of Transportation (MDOT) was immune from suit under Miss. Code Ann. § 11-46-9(1)(d) as Miss. Code Ann. § 65-1-65 did not impose any specific directives as to the time, manner, and conditions for carrying out MDOT's

duty to maintain highways, and the duty to remove trees from the right-of-way was discretionary; MDOT was not liable for the driver's injuries arising out of road maintenance. *Little v. Miss. DOT*, — So. 3d —, 2012 Miss. App. LEXIS 627 (Miss. Ct. App. Oct. 9, 2012).

CHAPTER 21

Bridges; General Provisions

§ 65-21-1. Width of bridges and culverts.

JUDICIAL DECISIONS

1. In general.

Mississippi Department of Transportation (MDOT) was not immune in a wrongful death claim alleging that a failure to place warning signs around a highway culvert, as required by Miss. Code Ann. § 65-21-1, resulted in an auto accident that caused the decedent's death because § 65-21-1 imposed a ministerial duty, and, as Miss. Code Ann. § 63-3-301 and Miss. Code Ann. § 63-3-303 included no language suggesting abrogation or repeal of § 65-21-1, that section—narrowly, pre-

cisely, and specifically requiring warning posts around culverts—remained in effect as an exception to the general rule of § 63-3-303 that the MDOT had discretion over such placement; Miss. Code Ann. § 65-21-1 controlled the specific issue of guide and warning posts around culverts, and § 63-3-303 controlled the discretionary placement of traffic devices that were not the subject of a specific statutory mandate. *Miss. DOT v. Nosef*, — So. 2d —, 2013 Miss. LEXIS 143 (Miss. Apr. 4, 2013).

TITLE 71

LABOR AND INDUSTRY

CHAPTER 3

Workers' Compensation

GENERAL PROVISIONS

§ 71-3-1. Citation; purpose; construction.

JUDICIAL DECISIONS

3. Construction.
4. —Causal connection.
12. Temporary total disability.

3. Construction.

4. —Causal connection.

Mississippi Workers' Compensation Commission's decision that a worker suffered an accidental injury, pursuant to Miss. Code Ann. § 71-3-3(b), within the course and scope of the worker's employment, pursuant to Miss. Code Ann. § 71-3-1(3), was not contrary to the overwhelming weight of the evidence because, although no one saw the worker pick a tire up and injure the worker's back, the worker informed the worker's supervisor immediately following the injury, and the supervisor testified that the worker emerged from beneath a van, stood up, and stated that the worker's back was bothering the worker. The only contradictory evidence presented was by the store manager, who claimed that the worker never said that the worker hurt the worker's back; however, the manager did admit that the worker complained of the worker's back hurting, and the administrative judge found that the testimony of the worker was definitely more credible than

that of the store manager. *Performance Tire & Wheel, Inc. v. Rhoads*, — So. 2d —, 2013 Miss. App. LEXIS 195 (Miss. Ct. App. Apr. 23, 2013).

12. Temporary total disability.

Temporary total disability award for six weeks and permanent partial disability award for 50 weeks and a finding that an employee reached maximum medical improvement on April 2, 1998, under Miss. Code Ann. § 71-3-1, based upon the testimony of a hand specialist and his release of the claimant the next day to return to work, even though he continued to treat the claimant, was proper. *Allegrezza v. Greenville Mfg. Co.*, — So. 3d —, 2012 Miss. App. LEXIS 594 (Miss. Ct. App. Sept. 25, 2012).

Mississippi Workers' Compensation Commission properly found that a claimant was not permanently and totally disabled due to a back injury as the plant had been closed for years before the hearing, and a physical therapist testified that with proper safety techniques, the claimant could perform all aspects of the job assigned to her by the employer. *Allegrezza v. Greenville Mfg. Co.*, — So. 3d —, 2012 Miss. App. LEXIS 594 (Miss. Ct. App. Sept. 25, 2012).

§ 71-3-3. Definitions.

JUDICIAL DECISIONS

17. Disability.
18. Employee, generally.
21. —Independent contractor.
23. Injury, generally.

30. —Proof of injuries.

17. Disability.

Award of permanent disability benefits was affirmed because substantial evidence supported an administrative judge's finding that an employee sustained a 75 percent loss of wage-earning capacity due to a work-related injury to the employees' back, which rendered the employee disabled under Miss. Code Ann. § 71-3-3(i). Furthermore, a doctor told the employee to limit the employee's bending, lifting, stooping, and climbing, and the employee made a credible search for work after the employee reached maximum medical improvement, but potential employers rebuffed the employee. *Harrison County Bd. of Supervisors v. Black*, — So. 2d —, 2013 Miss. App. LEXIS 148 (Miss. Ct. App. Apr. 2, 2013).

Evidence supported the workers' compensation commission's finding that an employee had sustained a fifty percent loss of wage-earning capacity and the award of temporary total disability benefits as the record showed that, while the employee presented to the employer for re-hire after his original injury, his post-injury condition progressively worsened, ultimately resulting in his retirement; however, as acknowledged by the commission, the employee failed to seek alternative work positions from the employer before retiring, even though he had the capacity to perform alternative duties. *Durbin v. Brown*, — So. 2d —, 2013 Miss. App. LEXIS 166 (Miss. Ct. App. Apr. 9, 2013).

Mississippi Workers' Compensation Commission's finding that there was no loss of wage-earning capacity was supported by substantial evidence because the evidence showed that the claimant could have returned to the claimant's previous job had there been a job available, and that the claimant could have found employment earning the same amount of pre-injury income. *Whiddon v. Southern Concrete Pumping, Llc*, — So. 2d —, 2013

Miss. App. LEXIS 208 (Miss. Ct. App. Apr. 23, 2013).

18. Employee, generally.

21. —Independent contractor.

Record failed to support the conclusion of the Mississippi Department of Employment Security that a worker constituted an employee under Miss. Code Ann. § 71-5-11(J)(14) because the worker constituted an independent contractor; the worker set his own hours and received a commission, not an hourly wage, and the employer failed to exercise control, nor did it possess a right of control, over the details of the actual sales work at issue. *College Network v. Miss. Dep't of Empl. Sec.*, — So. 2d —, 2013 Miss. App. LEXIS 179 (Miss. Ct. App. Apr. 16, 2013).

23. Injury, generally.

30. —Proof of injuries.

Mississippi Workers' Compensation Commission's decision that a worker suffered an accidental injury, pursuant to Miss. Code Ann. § 71-3-3(b), within the course and scope of the worker's employment, pursuant to Miss. Code Ann. § 71-3-1(3), was not contrary to the overwhelming weight of the evidence because, although no one saw the worker pick a tire up and injure the worker's back, the worker informed the worker's supervisor immediately following the injury, and the supervisor testified that the worker emerged from beneath a van, stood up, and stated that the worker's back was bothering the worker. The only contradictory evidence presented was by the store manager, who claimed that the worker never said that the worker hurt the worker's back; however, the manager did admit that the worker complained of the worker's back hurting, and the administrative judge found that the testimony of the worker was definitely more credible than that of the store manager. *Performance Tire & Wheel, Inc. v. Rhoads*, — So. 2d —, 2013 Miss. App. LEXIS 195 (Miss. Ct. App. Apr. 23, 2013).

§ 71-3-7. Liability for payment of compensation.

JUDICIAL DECISIONS

49. Wage-earning potential.

Mississippi Workers' Compensation Commission's finding that there was no loss of wage-earning capacity was supported by substantial evidence because the evidence showed that the claimant could have returned to the claimant's pre-

vious job had there been a job available, and that the claimant could have found employment earning the same amount of pre-injury income. *Whiddon v. Southern Concrete Pumping, LLC*, — So. 2d —, 2013 Miss. App. LEXIS 208 (Miss. Ct. App. Apr. 23, 2013).

§ 71-3-9. Exclusiveness of liability.

JUDICIAL DECISIONS

8. Negligent infliction of emotional distress.

Mississippi Workers' Compensation statutes provided an exclusive remedy for negligence claims by employees against their employers. Miss. Code Ann. § 71-

3-1. Therefore, the employee's negligent infliction of emotional distress claim was barred by Mississippi Workers' Compensation law. *Claiborne v. Miss. Bd. of Pharm.*, — F. Supp. 2d —, 2011 U.S. Dist. LEXIS 93849 (S.D. Miss. Aug. 22, 2011).

§ 71-3-15. Medical services and supplies.

JUDICIAL DECISIONS

2. Liability for services.

6. —Failure to request.

2. Liability for services.

6. —Failure to request.

Mississippi Workers' Compensation Commission's refusal to consider the treatments of the claimant by three doctors and the denial of the claimant's motion to amend her petition to claim psychological overlay were proper as the

claimant failed to seek permission from the employer or its carrier before receiving treatment from those doctors as required by Miss. Code Ann. § 71-3-15(1); no evidence of psychiatric complaints existed before the claimant's release to return to work under the rehabilitation specialist's restrictions. *Allegrezza v. Greenville Mfg. Co.*, — So. 3d —, 2012 Miss. App. LEXIS 594 (Miss. Ct. App. Sept. 25, 2012).

CHAPTER 5

Unemployment Compensation

ARTICLE 1.

GENERAL PROVISIONS.

§ 71-5-11. Definitions [Repealed effective July 1, 2019].

JUDICIAL DECISIONS

2. Determination of employment status.

Record failed to support the conclusion of the Mississippi Department of Employment Security that a worker constituted an employee under Miss. Code Ann. § 71-5-11(J)(14) because the worker constituted an independent contractor; the

worker set his own hours and received a commission, not an hourly wage, and the employer failed to exercise control, nor did it possess a right of control, over the details of the actual sales work at issue. *College Network v. Miss. Dep't of Empl. Sec.*, — So. 2d —, 2013 Miss. App. LEXIS 179 (Miss. Ct. App. Apr. 16, 2013).

ARTICLE 11.

BENEFITS.

§ 71-5-513. Disqualifications [Repealed effective July 1, 2019].

JUDICIAL DECISIONS

7. Misconduct discharge, generally.

8. — Held disqualification.

7. Misconduct discharge, generally.

8. — Held disqualification.

Employee was properly disqualified from receiving unemployment benefits under Miss. Code Ann. § 71-5-513(A)(1)(b) because, while there was little evidence concerning the alleged customers' complaints, there was substantial evidence that the employee's insubordination in continuously refusing to meet with the employee's superiors to address business concerns constituted misconduct. *Garrard v. Miss. Dep't of Empl. Sec.*, — So. 2d —, 2013 Miss. App. LEXIS 152 (Miss. Ct. App. Apr. 2, 2013).

Teacher was not entitled to receive unemployment benefits because the teacher's conduct of continuously and intentionally disobeying a directive from her supervisors amounted to misconduct un-

der Miss. Code Ann. § 71-5-513(A)(1)(b), especially since the teacher was aware that she could be moved to a different facility and that her failure to report to a new facility would jeopardize her employment. *Buller v. Miss. Dep't of Empl. Sec.*, — So. 2d —, 2013 Miss. App. LEXIS 180 (Miss. Ct. App. Apr. 16, 2013).

Unemployment benefits claimant was terminated for misconduct under Miss. Code Ann. § 71-5-513(A)(1)(b) and was properly denied benefits where: (1) he failed to properly spot a lift or to sound an alarm to warn that a lift was in danger of colliding with an airplane; (2) the claimant left his assigned station at the time of the collision, and had he remained at his station, he would have observed the lift in time to warn the lift operator; and (3) the claimant was terminated for violating and not following proper safety procedures, causing aircraft damage. *Williams v. Miss. Dep't of Empl. Sec.*, 99 So. 3d 258 (Miss. Ct. App. Oct. 2, 2012).

Substantial evidence supported denial of unemployment benefits to a former employee based on misconduct by the employee where there was evidence that the employee accused a customer of racism, the employee refused to apologize to the

customer, and the employee gave false statements to her employer during an investigation of the customer's complaint against the employee. *Patterson v. Miss. Dep't of Empl. Sec.*, 95 So. 3d 719 (Miss. Ct. App. 2012).

§ 71-5-519. Appeals [Repealed effective July 1, 2019].

JUDICIAL DECISIONS

2. Delivery.

Record established that an applicant's appeal of the denial of benefits was untimely where the appeal was stamped as received four days after the deadline, and the applicant's assertion that the Missis-

issippi Department of Employment Security's records were unreliable was wholly unsupported by the record. *Onyia v. Miss. Empl. Sec. Comm'n*, 98 So. 3d 1136 (Miss. Ct. App. Oct. 9, 2012).

§ 71-5-529. Appeal to courts [Repealed effective July 1, 2019].

JUDICIAL DECISIONS

2. Untimely appeal: dismissal appropriate.

Former employee's appeal from the Mississippi Department of Employment Security Board of Review's decision to deny the employee unemployment benefits was dismissed because the employee filed the

appeal one day too late, pursuant to Miss. Code Ann. §§ 71-5-529 and 71-5-531, and the employee presented insufficient evidence of good cause to expand the statutory deadline for the filing of the appeal. *Keyes v. Miss. Dep't of Empl. Sec.*, 95 So. 3d 757 (Miss. Ct. App. Aug. 14, 2012).

§ 71-5-531. Court review [Repealed effective July 1, 2019].

JUDICIAL DECISIONS

1. In general.
4. Review of findings of fact.
6. Time limitations.

1. In general.

Record failed to support the conclusion of the Mississippi Department of Employment Security that a worker constituted an employee under Miss. Code Ann. § 71-5-11(J)(14) because the worker constituted an independent contractor; the worker set his own hours and received a commission, not an hourly wage, and the employer failed to exercise control, nor did it possess a right of control, over the details of the actual sales work at issue. *College Network v. Miss. Dep't of Empl. Sec.*, — So. 2d —, 2013 Miss. App. LEXIS 179 (Miss. Ct. App. Apr. 16, 2013).

4. Review of findings of fact.

Appellate court was precluded from taking any new evidence regarding the reliability of Mississippi Department of Employment Security's records as there was no evidence of fraud in the findings made by a review board regarding the timeliness of an applicant's appeal of the denial of benefits; rather, the evidence in the record established that the applicant's appeal was in fact untimely. *Onyia v. Miss. Empl. Sec. Comm'n*, 98 So. 3d 1136 (Miss. Ct. App. Oct. 9, 2012).

6. Time limitations.

Former employee's appeal from the Mississippi Department of Employment Security Board of Review's decision to deny the employee unemployment benefits was dis-

missed because the employee filed the appeal one day too late, pursuant to Miss. Code Ann. §§ 71-5-529 and 71-5-531, and the employee presented insufficient evi-

dence of good cause to expand the statutory deadline for the filing of the appeal. *Keyes v. Miss. Dep't of Empl. Sec.*, 95 So. 3d 757 (Miss. Ct. App. Aug. 14, 2012).

TITLE 73
PROFESSIONS AND VOCATIONS

CHAPTER 13

Engineers and Land Surveyors

ENGINEERS

§ 73-13-3. Definitions.

JUDICIAL DECISIONS

2. Expert testimony.

Engineer may be qualified as an expert witness under Miss. R. Evid. 702 even if he or she is not licensed in Mississippi as

an engineer pursuant to Miss. Code Ann. §§ 73-13-1 through 73-13-45. *Tellus Operating Group, LLC v. Tex. Petroleum Inv. Co.*, 105 So. 3d 274 (Miss. 2012).

CHAPTER 25

Physicians

GENERAL PROVISIONS

§ 73-25-27. Suspension or revocation of license; notice and opportunity for hearing; appeal; subpoena power; validity of suspended or revoked license.

RESEARCH REFERENCES

ALR. Wrongful or Excessive Prescription of Drugs as Ground for Revocation or Suspension of Physician's or Dentist's License to Practice. 19 A.L.R. 6th 577.

Pretrial Discovery in Disciplinary Proceedings Against Physician. 65 A.L.R.6th 295.

**MEDICAL DISCIPLINE AT BEHEST OF PHYSICIAN MEMBERS OF
STATE BOARD OF MEDICAL LICENSURE**

§ 73-25-83. Grounds for disciplinary action by board.

RESEARCH REFERENCES

ALR. Pretrial Discovery in Disciplinary Proceedings Against Physician. 65 A.L.R. 6th 295.

CHAPTER 61

Tattooing and Body Piercing

§ 73-61-1. Tattooing.

RESEARCH REFERENCES

ALR. Regulation of Business of Tattooing. 67 A.L.R.6th 395.

TITLE 75

REGULATION OF TRADE, COMMERCE AND INVESTMENTS

CHAPTER 1

Uniform Commercial Code — Revised Article 1. General Provisions

PART 3.

TERRITORIAL APPLICABILITY AND GENERAL RULES.

§ 75-1-301. Territorial application of the code; parties' power to choose applicable law.

JUDICIAL DECISIONS

I. UNDER CURRENT LAW.

1. Choice of applicable law by agreement.

I. UNDER CURRENT LAW.

1. **Choice of applicable law by agreement.**

Asset purchase agreement (APA), which included a non-competition provision, was sufficiently connected to New York to satisfy the reasonable relation test, Miss. Code Ann. § 75-1-30, and, as such, New

York contract law applied because the APA contained a choice of law provision naming New York, most of the negotiations over the APA took place in New York, the APA was drafted by law firms in New York, and the buyer's board of directors approved the APA and the subsequent purchase at a meeting in New York; thus, any alleged oral modification of the APA was barred by N.Y. Gen. Oblig. Law § 15-301(1). *Asbury Ms Gray-daniels, L.L.C. v. Daniels*, 812 F. Supp. 2d 771 (S.D. Miss. Aug. 22, 2011).

CHAPTER 4A

Uniform Commercial Code—Funds Transfers

PART 1.

SUBJECT MATTER AND DEFINITIONS.

§ 75-4A-101. Short title.

RESEARCH REFERENCES

ALR. Effect of Uniform Commercial Code Article 4A on Attachment, Garnishment, Forfeiture or Other Third-Party

Process Against Funds Transfers. 66 A.L.R.6th 567.

§ 75-4A-102. Subject matter.

RESEARCH REFERENCES

ALR. Effect of Uniform Commercial Code Article 4A on Attachment, Garnishment, Forfeiture or Other Third-Party Process Against Funds Transfers. 66 A.L.R.6th 567.

CHAPTER 15

Mississippi Money Transmitters Act

§ 75-15-19. Monthly report of total amount of outstanding money transmissions; annual financial statement; examination or audit of books and records; certain books and records to be maintained for five years.

RESEARCH REFERENCES

ALR. Regulation of Consumer Loans under Uniform Consumer Credit Code. 73 A.L.R.6th 425.

CHAPTER 17

Interest, Finance Charges, and Other Charges

GENERAL PROVISIONS

§ 75-17-7. Interest on judgments and decrees.

JUDICIAL DECISIONS

6. Insurance cases.

In a dispute between insurers arising from a collision, the secondary insurer (of a county) was entitled to reimbursement from the primary insurer (of a volunteer firefighter) for reasonable and necessary

costs of defending the county; however, the trial court did not abuse its discretion in denying prejudgment interest. Indem. Ins. Co. of N. Am. v. Guidant Mut. Ins. Co., 99 So. 3d 142 (Miss. Oct. 4, 2012).

§ 75-17-21. Maximum finance charges by licensees under Small Loan Regulatory Law and Small Loan Privilege Tax Law; closing fees.

RESEARCH REFERENCES

ALR. Regulation of Consumer Loans under Uniform Consumer Credit Code. 73 A.L.R.6th 425.

§ 75-17-23. Maximum finance charges in connection with sales of factory manufactured moveable homes.

RESEARCH REFERENCES

ALR. Regulation of Consumer Loans under Uniform Consumer Credit Code. 73 A.L.R.6th 425.

§ 75-17-25. Meaning of “finance charge”; exclusion of prepayment penalties and default charges; effect of excessive finance charge.

RESEARCH REFERENCES

ALR. Regulation of Consumer Loans under Uniform Consumer Credit Code. 73 A.L.R.6th 425.

§ 75-17-27. Late payment charges.

RESEARCH REFERENCES

ALR. Regulation of Consumer Loans under Uniform Consumer Credit Code. 73 A.L.R.6th 425.

§ 75-17-29. Prohibition against use of multiple agreements to obtain excessive finance charge.

RESEARCH REFERENCES

ALR. Regulation of Consumer Loans under Uniform Consumer Credit Code. 73 A.L.R.6th 425.

§ 75-17-31. Limitations on prepayment penalties with respect to loans for certain real estate.

RESEARCH REFERENCES

ALR. Regulation of Consumer Loans under Uniform Consumer Credit Code. 73 A.L.R.6th 425.

§ 75-17-33. **Announcement of discount rates and indices by Commissioner of Banking and Consumer Finance; recording of maximum finance charge rates.**

RESEARCH REFERENCES

ALR. Regulation of Consumer Loans under Uniform Consumer Credit Code. 73 A.L.R.6th 425.

§ 75-17-35. **Computation of interest on refunds of excess rates by public utilities.**

RESEARCH REFERENCES

ALR. Regulation of Consumer Loans under Uniform Consumer Credit Code. 73 A.L.R.6th 425.

TITLE 77

PUBLIC UTILITIES AND CARRIERS

CHAPTER 9

Railroads and Other Common Carriers

ARTICLE 7.

TELEGRAPH AND TELEPHONE COMPANIES.

§ 77-9-715. Liability for damages caused by erection, continuance and use of lines.

JUDICIAL DECISIONS

2. Statute of frauds.
3. Constructive license.
4. Damages for trespass.

2. Statute of frauds.

Where a telephone company's constructive license to continue and use telephone lines and fixtures derived from Miss. Code Ann. § 77-9-715, the constructive license did not violate the statute of frauds, Miss. Code Ann. § 15-3-1, because the statute of frauds did not apply given that the telephone company's rights arose by operation of law and did not come from a contract. *Marlow, Llc v. Bellsouth Telecomms., Inc.*, — F. Supp. 2d —, 2011 U.S. Dist. LEXIS 54309 (S.D. Miss. May 18, 2011).

3. Constructive license.

Where a telephone company had telephone lines and fixtures that ran over a landowner's private property, the telephone company had a constructive license to use the lines and fixtures pursuant to

Miss. Code Ann. § 77-9-715 because § 77-9-715 was not limited to construction of telephone lines on public rights-of-way; thus, the landowner was not entitled to an injunction requiring the removal of the telephone company's equipment. *Marlow, Llc v. Bellsouth Telecomms., Inc.*, — F. Supp. 2d —, 2011 U.S. Dist. LEXIS 54309 (S.D. Miss. May 18, 2011).

4. Damages for trespass.

Where a telephone company had a constructive license under Miss. Code Ann. § 77-9-715 to use telephone lines and fixtures that ran over a landowner's private property, the landowner was not entitled to any damages for trespass because the telephone company had paid the prior owners of the property compensation for the permanent right to use the land and keep it cleared. *Marlow, Llc v. Bellsouth Telecomms., Inc.*, — F. Supp. 2d —, 2011 U.S. Dist. LEXIS 54309 (S.D. Miss. May 18, 2011).

TITLE 79
CORPORATIONS, ASSOCIATIONS, AND
PARTNERSHIPS

CHAPTER 13
Uniform Partnership Act (1997)

ARTICLE 1.
GENERAL PROVISIONS.

§ 79-13-101. Definitions.

RESEARCH REFERENCES

ALR. Construction and Application of
Revised Uniform Partnership Act. 70
A.L.R.6th 209.

CHAPTER 29
Revised Mississippi Limited Liability Company Act

ARTICLE 9.
PROFESSIONAL LIMITED LIABILITY COMPANIES.

**§ 79-29-911. Compulsory acquisition of membership interests
after death or disqualification of a member.**

JUDICIAL DECISIONS

3. Expelled member.

Chancery court did not err in granting a law firm summary judgment in its action alleging that it had satisfied its contractual obligations to an expelled member because in compliance with Miss. Code Ann. § 79-29-911, the firm's operating agreement specifically provided a formula

to determine an expelled member's interest; by opting against dissolution and instead tendering the member a check, the firm acted as authorized by its agreement. *Martindale v. Hortman Harlow Bassi Robinson & McDaniel PLLC*, — So. 3d —, 2012 Miss. App. LEXIS 603 (Miss. Ct. App. Oct. 2, 2012).

CHAPTER 35

The Mississippi Registered Agents Act

§ 79-35-13. Service of process on entities.

JUDICIAL DECISIONS

6. Under former § 79-29-111.

Ruling that no good cause had existed for a 60-day extension of the time for serving process on a limited liability company (LLC) in a wrongful eviction action was not an abuse of discretion where plaintiffs had previously been granted a 120-day extension, four years had elapsed between that extension and the 60-day extension in which it appeared plaintiffs

had not taken any steps toward serving defendants, and while the LLC had failed to update the address of its registered agent, service of process via the Secretary of State had always been available under former Miss. Code Ann. § 79-29-111(2). *Yarbrough v. Hiti Invs. Llc*, — So. 2d —, 2013 Miss. App. LEXIS 183 (Miss. Ct. App. Apr. 16, 2013).

TITLE 81
BANKS AND FINANCIAL INSTITUTIONS

CHAPTER 18

Mississippi S.A.F.E. Mortgage Act

IN GENERAL

§ 81-18-27. Prohibited acts; licensed mortgage broker or mortgage lender to broker residential mortgage loan only to licensed mortgage brokers or mortgage lenders or exempt persons [Repealed effective July 1, 2016].

Cross References — For additional notice requirements in mortgage foreclosure procedures that apply to mortgage broker licensees under Section 81-18-1 et seq, see § 81-18-55.

TITLE 83

INSURANCE

Chapter 39.	Bail Bonds and Bondsmen	83-39-1
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CHAPTER 39

Bail Bonds and Bondsmen

SEC.	
83-39-3.	Individual license required.

§ 83-39-3. Individual license required.

(1) No person shall act in the capacity of professional bail agent, soliciting bail agent or bail enforcement agent, as defined in Section 83-39-1, or perform any of the functions, duties or powers of the same unless that person shall be qualified and licensed as provided in this chapter. The terms of this chapter shall not apply to any automobile club or association, financial institution, insurance company or other organization or association or their employees who execute bail bonds on violations arising out of the use of a motor vehicle by their members, policyholders or borrowers when bail bond is not the principal benefit of membership, the policy of insurance or of a loan to such member, policyholder or borrower.

(2)(a) No license shall be issued or renewed except in compliance with this chapter, and none shall be issued except to an individual. No firm, partnership, association or corporation, as such, shall be so licensed. No professional bail agent shall operate under more than one (1) trade name. A soliciting bail agent and bail enforcement agent shall operate only under the professional bail agent's name. No license shall be issued to or renewed for any person who has ever been convicted of a felony or any crime involving moral turpitude or who is under twenty-one (21) years of age. No person engaged as a law enforcement or judicial official or attorney shall be licensed hereunder. A person who is employed in any capacity at any jail or corrections facility that houses state, county or municipal inmates who are bailable, whether the person is a public employee, independent contractor, or the employee of an independent contractor, may not be licensed under this section.

(b)(i) No person who is a relative of either a sworn state, county or municipal law enforcement official or judicial official, or an employee, independent contractor or the contractor's employee of any police department, sheriff's department, jail or corrections facility that houses or holds federal, state, county or municipal inmates who are bailable, shall write a bond in the county where the law enforcement entity or court in which the person's relative serves is located. "Relative" means a spouse, parent, grandparent, child, sister, brother, or a consanguineous aunt, uncle, niece or nephew. Violation of this prohibition shall result in license revocation.

(ii) No person licensed under this chapter shall act as a personal surety agent in the writing of bail during a period he or she is licensed as a limited surety agent, as defined herein.

(iii) No person licensed under this chapter shall give legal advice or a legal opinion in any form.

(3) The department is vested with the authority to enforce this chapter. The department may conduct investigations or request other state, county or local officials to conduct investigations and promulgate such rules and regulations as may be necessary for the enforcement of this chapter. The department may establish monetary fines and collect such fines as necessary for the enforcement of such rules and regulations. All fines collected shall be deposited in the Special Insurance Department Fund for the operation of that agency.

(4) Each license issued hereunder shall expire biennially on the last day of September, unless revoked or suspended prior thereto by the department, or upon notice served upon the commissioner by the insurer that the authority of a limited surety agent to act for or in behalf of such insurer had been terminated, or upon notice served upon the commissioner that the authority of a soliciting bail agent or bail enforcement agent had been terminated by such professional bail agent. A soliciting bail agent or bail enforcement agent may, upon termination by a professional bail agent or upon his cessation of employment with a professional bail agent, be relicensed without having to comply with the provisions of subsection (7)(a) of this section, if he has held a license in his respective license category within ninety (90) days of the new application, meets all other requirements set forth in Section 83-39-5 and subsection (7)(b) of this section, and notifies the previous professional bail agent in writing that he is submitting an application for a new license. Licenses shall expire on the last day of September of each odd-numbered year.

(5) The department shall prepare and deliver to each licensee a license showing the name, address and classification of such licensee, and shall certify that the person is a licensed professional bail agent, being designated as a personal surety agent or a limited surety agent, a soliciting bail agent or a bail enforcement agent. In addition, the license, if for a soliciting bail agent or bail enforcement agent, shall show the name of the professional bail agent and any other information as the commissioner deems proper.

(6) The commissioner, after a hearing under Section 83-39-17, may refuse to issue a privilege license for a soliciting bail agent to change from one (1) professional bail agent to another, if he owes any premium or debt to the professional bail agent with whom he is currently licensed. The commissioner, after a hearing under Section 83-39-17, shall refuse to issue a license for a limited surety agent if he owes any premium or debt to an insurer to which he has been appointed. If a license has been granted to a limited surety agent or a soliciting bail agent who owed any premium or debt to an insurer or professional bail agent, the commissioner, after a hearing under Section 83-39-17, shall revoke the license.

(7)(a) Before the issuance of any initial professional bail agent, soliciting bail agent or bail enforcement agent license, the applicant shall submit proof

of successful completion of forty (40) classroom hours of prelicensing education approved by the Professional Bail Agents Association of Mississippi, Inc., and conducted by persons or entities approved by the Professional Bail Agents Association of Mississippi, Inc. The hours required by this subsection shall be classroom hours and may not be acquired through correspondence or over the Internet. Any applicant who has been properly licensed under this chapter within ninety (90) days of submitting an application for a different license type shall not be subject to the prelicensing education requirement.

(b) Beginning on July 1, 2011, in order to assist the department in determining an applicant's suitability for a license under this chapter, the applicant shall submit a set of fingerprints with the submission of an application for license. The department shall forward the fingerprints to the Department of Public Safety for the purpose of conducting a criminal history record check. If no disqualifying record is identified at the state level, the fingerprints shall be forwarded by the Department of Public Safety to the Federal Bureau of Investigation for a national criminal history record check. Fees related to the criminal history record check shall be paid by the applicant to the commissioner and the monies from such fees shall be deposited in the special fund in the State Treasury designated as the "Insurance Department Fund."

(8)(a) Before the renewal of the license of any professional bail agent, soliciting bail agent or bail enforcement agent, the applicant shall submit proof of successful completion of continuing education hours as follows:

(i) There shall be no continuing education required for the first year of an original license;

(ii) Except as provided in subparagraph (i), eight (8) classroom hours of continuing education for each year or part of a year of the two-year license period, for a total of sixteen (16) hours per license period.

(b) If an applicant for renewal failed to obtain the required eight (8) hours for each year of the license period during the actual license year in which the education was required to be obtained, the applicant shall not be eligible for a renewal license but shall be required to obtain an original license and be subject to the education requirements set forth in subsection (7). The commissioner shall not be required to comply with Section 83-39-17 in denying an application for a renewal license under this paragraph (b).

(c) The education hours required under this subsection (8) shall consist of classroom hours approved by the Professional Bail Agents Association of Mississippi, Inc., and provided by persons or entities approved by the Professional Bail Agents Association of Mississippi, Inc. The hours required by this subsection shall be classroom hours and may not be acquired through correspondence or over the Internet.

(d) The continuing education requirements under this subsection (8) shall not be required for renewal of a professional bail agent license for any applicant who is sixty-five (65) years of age and who has been licensed as a professional bail agent for a continuous period of twenty (20) years immediately preceding the submission of the application as evidenced by submis-

sion of an affidavit, under oath, on a form prescribed by the department, signed by the licensee attesting to satisfaction of the age, licensing, and experience requirements of this paragraph (d).

(9) No license as a professional bail agent shall be issued unless the applicant has been duly licensed by the department as a soliciting bail agent for a period of three (3) consecutive years immediately preceding the submission of the application. However, this subsection (9) shall not apply to any person who was licensed as a professional bail agent before July 1, 2011.

(10) A nonresident person may be licensed as a professional bail agent, bail soliciting agent or bail enforcement agent if:

(a) The person's home state awards licenses to residents of this state on the same basis; and

(b) The person has satisfied all requirements set forth in this chapter.

SOURCES: Codes, 1942, § 8745-02; Laws, 1968, ch. 341, § 2; Laws, 1994, ch. 495, § 2; Laws, 1997, ch. 410, § 19; Laws, 1999, ch. 497, § 1; Laws, 2001, ch. 353, § 1; Laws, 2001, ch. 563, § 1; Laws, 2006, ch. 586, § 1; Laws, 2007, ch. 501, § 3; Laws, 2008, ch. 467, § 1; Laws, 2010, ch. 466, § 2; Laws, 2011, ch. 463, § 4; Laws, 2012, ch. 394, § 1, eff from and after July 1, 2012.

Editor's Note — This section was set out to correct an error in the 2012 Cumulative Supplement.

CHAPTER 58

New Home Warranty Act

§ 83-58-3. Definitions.

JUDICIAL DECISIONS

2. Limitations period.

Claim by homeowners against a builder under the New Home Warranty Act, Miss. Code Ann. § 83-58-1 et seq., for structural defects in the homeowners' home, was time-barred because (1) the claim had to

be filed within six years of the home's first occupation, under Miss. Code Ann. §§ 83-58-5(1)(b), and 83-58-3(g), and (2) the home was first occupied over six years before suit was filed. *Townes v. Rusty Ellis Builder, Inc.*, 98 So. 3d 1046 (Miss. 2012).

§ 83-58-5. Builder's warranties to owner.

JUDICIAL DECISIONS

2. Limitations period.

Claim by homeowners against a builder under the New Home Warranty Act, Miss. Code Ann. § 83-58-1 et seq., for structural defects in the homeowners' home, was time-barred because (1) the claim had to be filed within six years of the home's first occupation, under Miss. Code Ann. §§ 83-

58-5(1)(b), and 83-58-3(g), and (2) the home was first occupied over six years before suit was filed. *Townes v. Rusty Ellis Builder, Inc.*, 98 So. 3d 1046 (Miss. 2012).

Claim by homeowners against a builder under the New Home Warranty Act (NHW), Miss. Code Ann. § 83-58-1 et seq., was not subject to Miss. Code Ann.

§ 15-1-5 because the NHTA limitations period applied over the more general period in Miss. Code Ann. § 15-1-41. Townes

v. Rusty Ellis Builder, Inc., 98 So. 3d 1046 (Miss. 2012).

TITLE 85

DEBTOR-CREDITOR RELATIONSHIP

CHAPTER 3

Exempt Property

§ 85-3-1. Property exempt from seizure under execution or attachment.

RESEARCH REFERENCES

ALR. Purchase of Annuity by Debtor as Fraud on Creditors. 74 A.L.R.6th 549.

§ 85-3-4. Execution or attachment of wages, salaries or other compensation; limitations.

JUDICIAL DECISIONS

2. Obligee no longer has custody.

Under Miss. Ann. § 85-3-4(2)(a)(i), the trial court erred in ordering 55 percent, rather than 25 percent, withheld from a father's disposable income, because when

a judgment was awarded to the mother for past-due child support, she no longer had custody of the child. *Reasor v. Jordan*, — So. 2d —, 2013 Miss. LEXIS 144 (Miss. Apr. 4, 2013).

CHAPTER 7

Liens

MECHANICS AND STABLEKEEPERS

§ 85-7-101. Articles constructed, manufactured or repaired; lien for labor and materials.

JUDICIAL DECISIONS

1. In general.

7. Actions to enforce liens.

1. In general.

Mechanic's lien and storage lien statutes which were advanced by a party, who repaired and then stored an excavator, did not allow attorney's fees. *Caterpillar Fin. Servs. Corp. v. Burroughs Diesel, Inc.*, — So. 2d —, 2013 Miss. App. LEXIS 175

(Miss. Ct. App. Apr. 16, 2013).

7. Actions to enforce liens.

Repair company was not entitled to summary judgment on its mechanic's lien claim under Miss. Code Ann. § 85-7-101, for the labor and material to repair an excavator, because there were genuine issues of material facts in dispute, as the reasonableness or necessity of the repairs was not addressed. *Caterpillar Fin. Servs.*

Corp. v. Burroughs Diesel, Inc., — So. 2d —, 2013 Miss. App. LEXIS 175 (Miss. Ct. App. Apr. 16, 2013).

LABORERS, MATERIALMEN, ARCHITECTS, SURVEYORS, ENGINEERS,
WATER WELL DRILLERS AND CONTRACTORS

§ 85-7-141. Commencement of suit to enforce lien.

JUDICIAL DECISIONS

7. Limitations.

Dismissal of a suit seeking to enforce a construction lien was proper as: (1) the original complaint (OC) did not name the real party in interest under Miss. R. Civ. P. 17(a), the current owner (CO) of the building; (2) the prior owner had conveyed the property before the OC was filed; (3) the amended complaint (AC) was time-barred as it was not served on the CO

until after the Miss. Code Ann. § 85-7-141 limitations period expired; (4) due to the lack of timely service under Miss. R. Civ. P. 4(h), the AC did not relate back to the OC's filing under Miss. R. Civ. P. 15(c); and (5) the contractor did not show good cause for the delayed service. *Welch Roofing & Constr., Inc. v. Farina*, 99 So. 3d 274 (Miss. Ct. App. Oct. 16, 2012).

TOWING AND STORAGE OF MOTOR VEHICLES

§ 85-7-251. Sale of motor vehicle for towing and storage cost; notice requirement.

JUDICIAL DECISIONS

0.5. In general.

Mechanic's lien and storage lien statutes which were advanced by a party, who repaired and then stored an excavator, did not allow attorney's fees. *Caterpillar Fin. Servs. Corp. v. Burroughs Diesel, Inc.*, — So. 2d —, 2013 Miss. App. LEXIS 175 (Miss. Ct. App. Apr. 16, 2013).

Summary judgment award for a lien against an excavator for storage costs was inappropriate because there was nothing

in the stipulation before the county court about storage costs. The affidavits and materials filed in support of the motion for summary judgment discussed storage costs, but did not satisfy the statutory requirements of Miss. Code Ann. § 85-7-251. *Caterpillar Fin. Servs. Corp. v. Burroughs Diesel, Inc.*, — So. 2d —, 2013 Miss. App. LEXIS 175 (Miss. Ct. App. Apr. 16, 2013).

TITLE 89

REAL AND PERSONAL PROPERTY

CHAPTER 1

Land and Conveyances

IN GENERAL

§ 89-1-7. Estate in two or more persons.

JUDICIAL DECISIONS

3. Joint tenancy.

Award of the entire purchase price of a home to one of the unmarried joint tenants (JT1) was appropriate. Joint tenants were allowed to seek partition of a property under Miss. Code Ann. § 11-21-3 partition, the chancellor could adjust the equities and determine the claims of the

joint tenants under Miss. Code Ann. § 11-21-9, and JT1 had paid the entire purchase price for the home along with the cost of all utilities, insurance, club dues, and taxes while JT2 had paid nothing. *Jones v. Graphia*, 95 So. 3d 751 (Miss. Ct. App. 2012).

CHAPTER 5

Recording of Instruments

ARTICLE 1.

GENERAL PROVISIONS.

§ 89-5-3. Conveyances, mortgages; void if not lodged for record.

JUDICIAL DECISIONS

4. Effect of failure to record or delay in recording.

Decedent's ex-wife was not entitled to execute a judgment against real estate formerly jointly owned by the decedent and his widow but conveyed by four deeds to the widow's sister, although the late-recorded deeds were void as to the ex-wife under Miss. Code Ann. § 89-5-3, because

under Miss. Code Ann. § 15-3-101(b)(iii) (Supp. 2010) the property was not subject to a claim against only one joint tenant, and any right the ex-wife had to execute her judgment on the jointly held property ceased to exist upon the decedent's death. *Kelly v. Roby (In re Estate of Roby)*, 84 So. 3d 786 (Miss. Ct. App. June 28, 2011).

TITLE 91

TRUSTS AND ESTATES

Chapter 17.	Mississippi Principal and Income Act of 2013	91-17-101
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CHAPTER 1

Descent and Distribution

§ 91-1-15. Descent among illegitimates; definitions.

JUDICIAL DECISIONS

2. Legitimation of children born out of wedlock.

Chancery court did not err in determining an illegitimate child was the natural daughter of a decedent who died intestate because there was evidence the putative father openly acknowledged and treated the child as his natural daughter, as exhibited by declarations the putative father

made to others outside the family and by the fatherly conduct he bestowed on the child since the time she was a young girl; the weight to be given the DNA results, which were inconclusive as to paternity, was for the chancellor. In re Estate of Kendrick v. Gorden, 46 So. 3d 386 (Miss. Ct. App. Oct. 26, 2010).

CHAPTER 17

Mississippi Principal and Income Act of 2013

Article 5.	Allocation of Disbursements During Administration of Trust	91-17-501
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ARTICLE 5.

ALLOCATION OF DISBURSEMENTS DURING ADMINISTRATION OF TRUST.

SEC.	
91-17-506.	Adjustments between principal and income because of taxes.

§ 91-17-506. Adjustments between principal and income because of taxes.

A fiduciary may make adjustments between principal and income to offset the shifting of economic interests or tax benefits between income beneficiaries and remainder beneficiaries which arise from:

- (1) Elections and decisions, that the fiduciary makes from time to time regarding tax matters;
- (2) An income tax or any other tax that is imposed upon the fiduciary or a beneficiary as a result of a transaction involving or a distribution from the estate or trust; or
- (3) The ownership by an estate or trust of an interest in an entity whose taxable income, whether or not distributed, is includable in the taxable income of the estate, trust, or a beneficiary.

SOURCES: Laws, 2012, ch. 351, § 1, eff from and after Jan. 1, 2013.

Editor's Note — This chapter was enacted by Laws of 2012, ch. 351, § 1, effective from and after January 1, 2013, to replace §§ 91-17-1 through 91-17-31, which were repealed by § 2 of the same act, effective from and after January 1, 2013.

TITLE 93

DOMESTIC RELATIONS

CHAPTER 5

Divorce and Alimony

§ 93-5-23. Custody of children; alimony.

JUDICIAL DECISIONS

I. ALIMONY.

- 9. Amount of payments; generally.
- 10. — Periodic payments.

V. MODIFICATION OF DECREE.

- 36. Custody; generally.
- 39. —Evidence.

I. ALIMONY.

9. Amount of payments; generally.

10. — Periodic payments.

In a dissolution matter, a chancery court did not abuse its discretion in awarding a wife \$ 1,500 per month in periodic alimony because the parties were married eleven years, the wife suffered from a genetic illness and was unable to work, and the husband earned \$ 84,000 per year while the wife's annual \$ 9,324

Social Security disability benefit was her only source of income; the husband was fully aware of the wife's illness prior to their marriage. *Rogillio v. Rogillio*, — So. 3d —, 2011 Miss. LEXIS 617 (Miss. Sept. 27, 2011).

V. MODIFICATION OF DECREE.

36. Custody; generally.

39. —Evidence.

Trial court erred in modifying custody based on a material change in circumstances—the mother's inability to set and enforce boundaries for the children—as its finding that the mother imposed little or no discipline on the children was not supported by substantial, credible evidence. *A.M.L. v. J.W.L.*, 98 So. 3d 1001 (Miss. 2012).

§ 93-5-24. Types of custody awarded by court; joint custody; no presumption in favor of maternal custody; access to information pertaining to child by noncustodial parent; restrictions on custody by parent with history of perpetrating family violence; rebuttable presumption that such custody is not in the best interest of the child; factors in reaching determinations; visitation orders.

JUDICIAL DECISIONS

- 1. Factors affecting custody — In general.
- 4. —Parent's sexual relations.
- 14. Modification improper.

1. Factors affecting custody — In general.

Collins, 98 So. 3d 506 (Miss. Ct. App. Oct. 2, 2012).

4. —Parent's sexual relations.

Chancery court did not place undue weight on a mother's moral fitness in finding it was in the child's best interest for the father to have primary physical custody, Miss. Code Ann. § 93-5-24, because the mother's adultery was important to show how her behavior and relationship with the child had changed; the court's findings were not a sanction against an adulterous parent. Collins v.

14. Modification improper.

Trial court erred in modifying custody based on a material change in circumstances—the mother's inability to set and enforce boundaries for the children—as its finding that the mother imposed little or no discipline on the children was not supported by substantial, credible evidence. A.M.L. v. J.W.L., 98 So. 3d 1001 (Miss. 2012).

CHAPTER 11

Enforcement of Support of Dependents

IN GENERAL

§ 93-11-65. Custody and support of minor children; additional remedies; determination of emancipation; temporary support awarded pending determination of parentage.

JUDICIAL DECISIONS

II. SUPPORT OF CHILDREN.

16. Modification.

II. SUPPORT OF CHILDREN.

16. Modification.

Trial court erred in terminating a father's college-expense obligation to his

daughter, as he did not request that relief, and the daughter was a child with the aptitude and desire to attend college, for whom the parties agreed to provide at least a four year college education. A.M.L. v. J.W.L., 98 So. 3d 1001 (Miss. 2012).

CHAPTER 13

Guardians and Conservators

WARDS, GENERALLY

§ 93-13-17. Bond and oath of guardian.

JUDICIAL DECISIONS

11. Miscellaneous.

Attorney's disbarment from the practice of law was appropriate because his fraud, perjury, embezzlement, and abuse concerning a minor client's guardianship rendered him grossly unfit to practice law.

Consequently, the Mississippi Bar met its burden to show that the attorney should be disbarred immediately. Miss. Bar v. Brown, — So. 3d —, 2012 Miss. LEXIS 474 (Miss. Oct. 4, 2012).

CONSERVATORS

§ 93-13-251. Petition for appointment of conservator; jurisdiction of courts.

JUDICIAL DECISIONS

2. Appointment proper.

Appointment of a conservator for an elderly ward was supported by substantial evidence where the ward testified that she had been told she had Alzheimer's and that her mind was not as clear as it once

had been and both a doctor and a psychologist who examined the ward testified that she was unable to attend to her physical needs or to manage her financial affairs. *Salter v. Johnston*, 98 So. 3d 1130 (Miss. Ct. App. Oct. 9, 2012).

CHAPTER 27

Uniform Child Custody Jurisdiction and Enforcement Act

ARTICLE 1.

GENERAL PROVISIONS.

§ 93-27-105. International application.

RESEARCH REFERENCES

ALR. Applicability and Application of Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) to Interna-

tional Child Custody and Support Actions. 66 A.L.R.6th 269.

TITLE 95

TORTS

CHAPTER 1

Libel and Slander

§ 95-1-1. Certain words actionable.

RESEARCH REFERENCES

ALR. Defamation of Psychiatrist, Psychologist, or Counselor. 67 A.L.R.6th 437.

CHAPTER 9

Liability Exemption for Volunteers and Sports Officials

§ 95-9-1. Definitions; liability exemption for volunteers; exceptions.

JUDICIAL DECISIONS

1. Volunteer fire departments.

Volunteer firefighter was not immune from suit under the Mississippi Tort Claims Act (MTCA) for claims arising from an automobile accident because the volunteer fire department was not a politi-

cal subdivision of the State. Under Miss. Code Ann. § 95-9-1(3)(b), the firefighter could be liable for negligent operation of a vehicle. *Poppenheimer v. Estate of Coyle*, 98 So. 3d 1059 (Miss. Oct. 4, 2012).

TITLE 97

CRIMES

Chapter 37. Weapons and Explosives	97-37-1
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CHAPTER 1

Conspiracy, Accessories and Attempts

§ 97-1-1. Conspiracy.

JUDICIAL DECISIONS

9. Evidence.

14.5. — Sufficiency; conspiracy.

9. Evidence.

14.5. — Sufficiency; conspiracy.

Weight of the evidence was sufficient to convict defendant of conspiracy to commit arson in violation of Miss. Code Ann. § 97-1-1 and attempted arson in violation of Miss. Code Ann. § 97-17-9 because an accomplice's testimony that he and defendant entered into an agreement for him to burn the victim's vehicle was uncontradicted; in addition to the testimony of the accomplice was the of other witnesses who provided additional evidence of defendant's animosity towards the victim.

Bradford v. State, 102 So. 3d 312 (Miss. Ct. App. 2012).

Evidence was sufficient to convict defendant of conspiracy to commit arson in violation of Miss. Code Ann. § 97-1-1 and attempted arson in violation of Miss. Code Ann. § 97-17-9 because the jury could conclude from an accomplice's testimony that he and defendant entered into an agreement for him to burn the victim's vehicle; the accomplice told the same basic story to the police that he told to the jury, and nothing in the record indicated that the accomplice's testimony was unreasonable, inconsistent, or impeached. Bradford v. State, 102 So. 3d 312 (Miss. Ct. App. 2012).

§ 97-1-7. Attempt to commit offense; punishment.

JUDICIAL DECISIONS

1. In general.

Defendant's right against double-jeopardy was not violated because, while the counts for fondling, under Miss. Code Ann. § 97-5-23(1), and the attempted-sexual-battery, under Miss. Code. Ann. § 97-1-7, stemmed from the same encounter, the elements of the crimes were not

the same as each count contained an element not contained in the other. Attempted sexual battery did not contain the element of gratification of lust, while fondling did not require the element of penetration. Moore v. State, — So. 2d —, 2013 Miss. App. LEXIS 207 (Miss. Ct. App. Apr. 23, 2013).

CHAPTER 3

Crimes Against the Person

§ 97-3-7. Simple assault; aggravated assault; simple domestic violence; aggravated domestic violence.

JUDICIAL DECISIONS

- 7. Defenses; generally.
- 8. — Self-defense.
- 10. Evidence; generally.
- 15. — Sufficiency.
- 16. — — Charge or conviction supportable.
- 19. Instructions; generally.
- 28. Miscellaneous.

7. Defenses; generally.

In defendant's trial on a charge of misdemeanor domestic violence, pursuant to Miss. Code Ann. § 97-3-7(3), her defense of necessity failed because defendant did not bite the victim, her husband, to avoid harm, but instead, defendant bit him to free herself to leave the home; there was no evidence to suggest that defendant felt she was in imminent danger of death or serious bodily harm to others. *Anderson v. State*, 102 So. 3d 304 (Miss. Ct. App. 2012), writ of certiorari dismissed by 105 So. 3d 326, 2013 Miss. LEXIS 37 (Miss. 2013).

8. — Self-defense.

In defendant's trial on a charge of misdemeanor domestic violence, pursuant to Miss. Code Ann. § 97-3-7(3), her claim of self-defense failed because there was no evidence to suggest that defendant feared the victim, her husband, would hurt her or cause her some great bodily harm; defendant's actions were made to escape the victim's restraint and leave the home and the evidence supported a conclusion that defendant presented a threat of danger and great bodily harm to herself and others. *Anderson v. State*, 102 So. 3d 304 (Miss. Ct. App. 2012), writ of certiorari dismissed by 105 So. 3d 326, 2013 Miss. LEXIS 37 (Miss. 2013).

10. Evidence; generally.**15. — Sufficiency.**

Evidence was sufficient to support defendant's conviction for aggravated as-

sault under Miss. Code Ann. § 97-3-7(2)(a)(ii) because defendant's sister-in-law testified that after defendant threatened and hit her with the butt of the gun, he intentionally shot her. *Smith v. State*, — So. 2d —, 2013 Miss. App. LEXIS 176 (Miss. Ct. App. Apr. 16, 2013).

Evidence that defendant choked the victim with his hands until she nearly passed out was sufficient to support a jury's decision that defendant was guilty of aggravated assault. *Sellers v. State*, 108 So. 3d 456 (Miss. Ct. App. 2012), writ of certiorari denied by 2013 Miss. LEXIS 126 (Miss. Feb. 28, 2013).

Weight of the evidence supported defendant's convictions for aggravated assault and conspiracy to commit aggravated assault because defendant did not specify any contradictory evidence that showed his guilty verdict was unconscionably unjust. *Moore v. State*, 105 So. 3d 390 (Miss. Ct. App. 2012), writ of certiorari denied by 2013 Miss. LEXIS 101 (Miss. Mar. 21, 2013).

Sufficient evidence supported defendant's conviction for misdemeanor domestic violence, pursuant to Miss. Code Ann. § 97-3-7(3), because the 911 dispatcher testified the victim, who was defendant's husband, stated defendant bit him during an altercation, pictures of the victim's injuries were admitted into evidence, and defendant admitted biting the victim; the husband's decision not to cooperate with the prosecution did not preclude a charge of domestic violence against defendant, pursuant to Miss. Code Ann. § 99-3-7(3)(a). *Anderson v. State*, 102 So. 3d 304 (Miss. Ct. App. 2012), writ of certiorari dismissed by 105 So. 3d 326, 2013 Miss. LEXIS 37 (Miss. 2013).

16. — — Charge or conviction supportable.

Evidence presented at trial was sufficient to support defendant's convictions of

aggravated assault (Miss. Code Ann. § 97-3-7(2)(a)) and burglary of a dwelling (Miss. Code Ann. § 97-17-23), as it established that he drove two men to pick up a crowbar and then drove them to the victim's house, where they used the crowbar to pry open the door and assault the victim; moreover, his confession established his involvement in the crimes. *Whitaker v. State*, — So. 3d —, 2012 Miss. App. LEXIS 481 (Miss. Ct. App. Aug. 7, 2012).

Defendant's convictions for aggravated assault and conspiracy to commit aggravated assault were sufficiently supported by the evidence because the jury could have reasonably inferred that an agreement existed between defendant and his nephews to help defendant carry out the assault. *Moore v. State*, 105 So. 3d 390 (Miss. Ct. App. 2012), writ of certiorari denied by 2013 Miss. LEXIS 101 (Miss. Mar. 21, 2013).

Evidence was sufficient to convict defendant of aggravated assault. Though a witness never stated that she saw him fire a gun, her testimony that he had a firearm and was near the scene of the incident just before the shooting, that he was running behind her holding a gun, and that she

then heard shooting, constituted circumstantial evidence to that effect. *Jones v. State*, 95 So. 3d 641 (Miss. Aug. 23, 2012).

19. Instructions; generally.

Trial court's aiding-and-abetting instruction, read together with its aggravated-assault instruction, adequately informed the jury that if one defendant was found guilty individually, his codefendant could not be found guilty individually without deliberately associating himself in some way with the crime and participating in it. *Jones v. State*, 95 So. 3d 641 (Miss. Aug. 23, 2012).

28. Miscellaneous.

Defendant's constitutional right to confront his accusers and be present and sentencing were not violated when defendant was convicted and sentenced in absentia of felony third-offense domestic violence, Miss. Code Ann. § 97-3-7(3), because defendant voluntarily waived his sentence at trial and sentencing, pursuant to Miss. Code Ann. § 99-17-9, by willfully failing to attend; defendant spoke with his attorney the morning of trial and indicated he was attending but defendant never showed up. *Robinson v. State*, 66 So. 3d 198 (Miss. Ct. App. June 28, 2011).

RESEARCH REFERENCES

ALR. Parts of Human Body, other than Feet, as Deadly or Dangerous Weapons or Instrumentalities for Purposes of Statutes

Aggravating Offenses such as Assault and Robbery. 67 A.L.R.6th 103.

§ 97-3-19. Homicide; murder defined; capital murder; lesser-included offenses.

JUDICIAL DECISIONS

I. IN GENERAL.

3. Plea.
21. Indictment.

II. EVIDENTIARY MATTERS.

35. Witnesses—defendant as only witness to offense.
37. Admissibility; generally.
43. —Expert testimony; scientific techniques.
49. Sufficiency of evidence; generally.

50. — Conviction sustained — murder.

III. INSTRUCTIONS.

66. Malice or deliberate design.
71. Instructions properly denied.

I. IN GENERAL.

3. Plea.

Inmate who pled guilty to murder under Miss. Code Ann. § 97-3-19(1)(a) waived his right to challenge the sufficiency of the State's evidence. *Higginbotham v. State*,

— So. 3d —, 2012 Miss. App. LEXIS 595 (Miss. Ct. App. Sept. 25, 2012).

Defendant's guilty plea to murder under Miss. Code Ann. § 97-3-19(1)(a) was knowing, voluntary, and intelligent as defense counsel correctly advised the inmate that when he reached the 65, he could petition to be released from custody under Miss. Code Ann. § 47-5-139(1)(a); while counsel might have used the term "parole eligibility" rather than the correct term "conditional release," he correctly advised the inmate that he would be eligible for release at age 65. *Higginbotham v. State*, — So. 3d —, 2012 Miss. App. LEXIS 595 (Miss. Ct. App. Sept. 25, 2012).

21. Indictment.

Defendant was placed in double jeopardy when he was convicted on two counts of armed robbery and two counts of capital murder for killing while engaged in the commission of those same two armed robberies; although there were several other armed robbery victims present, only the two murder victims were named in the indictment. *Rowland v. State*, 98 So. 3d 1032 (Miss. Oct. 4, 2012).

II. EVIDENTIARY MATTERS.

35. Witnesses—defendant as only witness to offense.

In a murder case where defendant was the only eyewitness to the fatal shooting of his wife, because his statement to his mistress that his wife had committed suicide contradicted his assertion at trial that he had shot her accidentally, he was not entitled to a judgment of acquittal under *Weathersby v. State*, 147 So. 481 (1933). *Parvin v. State*, — So. 2d —, 2013 Miss. LEXIS 145 (Miss. Apr. 11, 2013).

37. Admissibility; generally.

43. —Expert testimony; scientific techniques.

Where defendant claimed he accidentally shot his wife, his murder conviction was reversed because a crime scene analyst's computer-generated depiction of the shooting was improperly admitted, as it was based on mere speculation and possibilities. *Parvin v. State*, — So. 2d —, 2013 Miss. LEXIS 145 (Miss. Apr. 11, 2013).

Where defendant claimed he accidentally shot his wife, his murder conviction was reversed because a forensic pathologist's measurements and a crime scene analyst's testimony about the shooting were inadmissible under Miss. R. Evid. 702, as the pathologist did not cite any scientific principle to explain how he calculated his distance and trajectory measurements, and the analyst testified that his theory was his "best approximation" of a "hypothesis" of how "maybe the incident happened." *Parvin v. State*, — So. 2d —, 2013 Miss. LEXIS 145 (Miss. Apr. 11, 2013).

49. Sufficiency of evidence; generally.

50. — Conviction sustained — murder.

Evidence was sufficient to support defendant's conviction for murder, as he fatally shot the victim in the back of the head, his claim of imperfect self-defense was rejected by the jury, and he failed to provide evidence, scientific or otherwise, to support his claim that the shot was in the back of the victim's head because he had tried to duck to avoid being shot. *Branch v. State*, — So. 2d —, 2012 Miss. App. LEXIS 826 (Miss. Ct. App. June 19, 2012).

Evidence was sufficient to support defendant's conviction for depraved-heart murder under Miss. Code Ann. § 97-3-19(1)(b) because defendant's sister-in-law testified that defendant intentionally pointed a gun at his brother and shot. *Smith v. State*, — So. 2d —, 2013 Miss. App. LEXIS 176 (Miss. Ct. App. Apr. 16, 2013).

Defendant's murder conviction under Miss. Code Ann. § 97-3-19(1)(a) was appropriate because the evidence was sufficient. Although defendant testified that he shot the victim in self-defense, the victim was sitting in the car with his widow up, facing forward, when he was shot; the victim's wife also testified that defendant had walked past her to go to the driver's side of the vehicle. *Page v. State*, 64 So. 3d 482 (Miss. June 30, 2011).

III. INSTRUCTIONS.

66. Malice or deliberate design.

Jury instruction that created a mandatory presumption in defendant's trial on a

charge of murder by deliberate design, in violation of Miss. Code Ann. § 97-3-19(1)(a), was error, as the jury could have convicted defendant based upon the presumption as opposed to evidence beyond a reasonable doubt; the error was not harmless. *Williams v. State*, — So. 2d —, 2013 Miss. LEXIS 160 (Miss. Apr. 18, 2013).

71. Instructions properly denied.

Trial court properly rejected defendant's requested jury instructions in his trial on

a charge of murder, as they were improper statements of the law, and the form of the instructions made them unfairly leading and prejudicial. *Branch v. State*, — So. 2d —, 2012 Miss. App. LEXIS 826 (Miss. Ct. App. June 19, 2012).

RESEARCH REFERENCES

ALR. Sufficiency of Evidence to Support Homicide Conviction Where No Body Was Produced. 65 A.L.R. 6th 359

§ 97-3-21. Homicide; penalty for murder or capital murder.

JUDICIAL DECISIONS

0.5. Constitutionality.

Miss. Code Ann. § 97-3-21 was not unconstitutionally vague and did not apply to an inmate where the inmate confused parole with conditional release as: (1) Miss. Code Ann. § 47-7-3(1)(f) prohibited parole for an inmate sentenced to life under Miss. Code Ann. § 99-19-101 for capital offenses; (2) since the inmate pled

guilty to murder, carrying a life sentence, he was convicted of an other capital offense under Miss. Code Ann. § 1-3-4; and (3) the inmate was eligible to petition for conditional release at age 65 under Miss. Code Ann. § 47-5-139(1)(a). *Higginbotham v. State*, — So. 3d —, 2012 Miss. App. LEXIS 595 (Miss. Ct. App. Sept. 25, 2012).

§ 97-3-35. Homicide; killing without malice in the heat of passion.

JUDICIAL DECISIONS

4. Self-defense.
6. Evidence; generally.
7. — Warranting manslaughter.
- 7.5 — Not warranting manslaughter.

4. Self-defense.

Murder defendant was not entitled to a instruction on imperfect self-defense, reducing the crime to manslaughter, because defendant's testimony that the victim pulled a gun on him first provided no evidentiary basis for finding the required bona fide but unfounded belief. *Young v. State*, 99 So. 3d 159 (Miss. Oct. 4, 2012).

6. Evidence; generally.

7. — Warranting manslaughter.

Overwhelming weight of the evidence did not preponderate against defendant's manslaughter conviction because no gun was found in the car where the victim was shot, the victim survived the shooting long enough to name defendant as his shooter, and defendant admitted to several family members that he had killed someone but did not allege self-defense; where the evidence would justify a conviction of murder, the defendant may not complain of a

conviction of the lesser offense of manslaughter. *Burdette v. State*, — So. 2d —, 2013 Miss. LEXIS 75 (Miss. Mar. 28, 2013).

7.5 — Not warranting manslaughter.

Defendant's claim that he was only guilty of, at most, manslaughter, in violation of Miss. Code Ann. § 97-3-35, lacked merit in defendant's murder trial, as his claim of imperfect self-defense and asser-

tion that he was under duress at the time of the killing was rejected by the jury; rather, there was evidence that defendant had retrieved a gun, that he and the victim had been involved in a verbal and physical altercation for a long period of time, and that defendant deliberately shot the victim in the back of the head. *Branch v. State*, — So. 2d —, 2012 Miss. App. LEXIS 826 (Miss. Ct. App. June 19, 2012).

§ 97-3-69. Rape; "chaste character" presumed; uncorroborated testimony of victim insufficient.

JUDICIAL DECISIONS

3. Corroboration.

There was sufficient evidence for a rational trier of fact to find defendant guilty of forcible rape because the victim's testimony was not uncorroborated since the victim she was able to describe and lead police to the exact location of where the alleged incident had occurred; even if the victim's testimony had been uncorrobo-

rated, her testimony was not discredited or contradicted by credible evidence because the victim's post-incident behavior was a factor for the jury to consider, but her actions were not highly unreasonable or improbable. *Ben v. State*, 95 So. 3d 1236 (Miss. Aug. 23, 2012), writ of certiorari denied by 2013 U.S. LEXIS 2589, 81 U.S.L.W. 3555 (U.S. Apr. 1, 2013).

§ 97-3-71. Rape; assault with intent to ravish.

JUDICIAL DECISIONS

3. Evidence.

4. —Corroboration.

3. Evidence.

4. —Corroboration.

There was sufficient evidence for a rational trier of fact to find defendant guilty of forcible rape because the victim's testimony was not uncorroborated since the victim she was able to describe and lead police to the exact location of where the

alleged incident had occurred; even if the victim's testimony had been uncorroborated, her testimony was not discredited or contradicted by credible evidence because the victim's post-incident behavior was a factor for the jury to consider, but her actions were not highly unreasonable or improbable. *Ben v. State*, 95 So. 3d 1236 (Miss. Aug. 23, 2012), writ of certiorari denied by 2013 U.S. LEXIS 2589, 81 U.S.L.W. 3555 (U.S. Apr. 1, 2013).

§ 97-3-75. Robbery; penalty.

JUDICIAL DECISIONS

2. Maximum sentence.

Defendant's robbery conviction was affirmed because (1) counsel, upon finding no arguable appellate issues, complied with Lindsey and Miss. R. App. P. 28, (2) defendant filed no pro se brief, and (3) an

independent review of the record showed no arguable appellate issues, as defendant had proper notice of the charge, defendant's alibi witness testified over the State's objection, the jury was instructed on the elements of robbery and the State's

burden, the evidence was sufficient, and defendant's sentence was within the statutory maximum in Miss. Code Ann. § 97-3-75. *Federick v. State*, — So. 3d —,

2012 Miss. App. LEXIS 503 (Miss. Ct. App. Aug. 14, 2012), writ of certiorari denied by 2013 Miss. LEXIS 97 (Miss. Mar. 14, 2013).

§ 97-3-79. Robbery; use of deadly weapon.

JUDICIAL DECISIONS

12. Sufficiency of evidence; generally.

22. Double jeopardy.

12. Sufficiency of evidence; generally.

Conviction for armed robbery was not contrary to the weight of the evidence. An eyewitness testified that defendant stole a gun and backpack from the victim, the jury could draw the reasonable inference from the evidence that defendant had motive to rob the victim, and the victim testified that defendant placed a gun at the back of the victim's head. *Renfro v.*

State, — So. 2d —, 2013 Miss. LEXIS 150 (Miss. Apr. 11, 2013).

22. Double jeopardy.

Defendant was placed in double jeopardy when he was convicted on two counts of armed robbery and two counts of capital murder for killing while engaged in the commission of those same two armed robberies; although there were several other armed robbery victims present, only the two murder victims were named in the indictment. *Rowland v. State*, 98 So. 3d 1032 (Miss. Oct. 4, 2012).

RESEARCH REFERENCES

ALR. Parts of Human Body, other than Feet, as Deadly or Dangerous Weapons or Instrumentalities for Purposes of Statutes

Aggravating Offenses such as Assault and Robbery. 67 A.L.R.6th 103.

§ 97-3-95. Sexual battery.

JUDICIAL DECISIONS

7. Evidence; generally; admissibility.

In a sexual battery prosecution, the trial court erred in allowing a forensic psychologist to testify about a child's statement that defendant had put his mouth on the child's penis, as the trial

court made no finding as to the reliability of the hearsay statement and did not conduct a hearing outside the presence of the jury as required by Miss. R. Evid. 803(25). *Rogers v. State*, 95 So. 3d 623 (Miss. Aug. 16, 2012).

§ 97-3-101. Sexual battery; penalty.

JUDICIAL DECISIONS

2. Sentence ranges.

Defendant's sentence was not illegal, under Miss. Code Ann. § 97-3-101(3), because, for the attempted-sexual-battery count, defendant was sentenced to twelve years, with eight years of post-release

supervision, which, when combined, was for twenty years and was within the statutory limits. *Moore v. State*, — So. 2d —, 2013 Miss. App. LEXIS 207 (Miss. Ct. App. Apr. 23, 2013).

CHAPTER 5

Offenses Affecting Children

§ 97-5-23. Touching, handling, etc., child, mentally defective or incapacitated person or physically helpless person.

JUDICIAL DECISIONS

1. In general.
4. Sentence.
7. Jury instructions.

1. In general.

Defendant's right against double-jeopardy was not violated because, while the counts for fondling, under Miss. Code Ann. § 97-5-23(1), and the attempted-sexual-battery, under Miss. Code Ann. § 97-1-7, stemmed from the same encounter, the elements of the crimes were not the same as each count contained an element not contained in the other. Attempted sexual battery did not contain the element of gratification of lust, while fondling did not require the element of penetration. *Moore v. State*, — So. 2d —, 2013 Miss. App. LEXIS 207 (Miss. Ct. App. Apr. 23, 2013).

4. Sentence.

Appellant's sentences for the sexual exploitation of a minor in violation of Miss. Code Ann. § 97-5-33(6) and fondling in violation of Miss. Code Ann. § 97-5-23(2) were within the limits prescribed by the statutes; appellant faced up to eighty-five years in prison, and the circuit court sentenced him to the maximum sentence on all charges but required the sentences to run concurrently, effectively reducing appellant's sentence by forty-five years. *Argol v. State*, — So. 2d —, 2013 Miss.

App. LEXIS 143 (Miss. Ct. App. Apr. 2, 2013).

Defendant's sentence was not illegal because, for the fondling count, defendant was sentenced to twelve years, with three years post-release supervision, which, when combined, was for fifteen years and was within the statutory limits. *Moore v. State*, — So. 2d —, 2013 Miss. App. LEXIS 207 (Miss. Ct. App. Apr. 23, 2013).

Defendant's motion for postconviction relief was properly dismissed because it was untimely under Miss. Code Ann. § 99-39-5(2) and defendant's sentence was not illegal since it was undeniably less than the 15-year maximum sentence for touching a child for lustful purposes under Miss. Code Ann. § 97-5-23(1). *Desemar v. State*, 99 So. 3d 279 (Miss. Ct. App. Oct. 16, 2012).

7. Jury instructions.

Where a child testified that defendant sodomized him while they were in a chicken house in Lena, Mississippi, which the boy believed was in Scott County, as Lena was in fact in Leake County, and the jury was never instructed that it had to find beyond a reasonable doubt that the crime had occurred in Scott County—an essential element of the offense—defendant's conviction of fondling the child was reversed. *Rogers v. State*, 95 So. 3d 623 (Miss. Aug. 16, 2012).

§ 97-5-33. Exploitation of children; prohibitions.

JUDICIAL DECISIONS

5. Evidence.
8. Sentence.

5. Evidence.

Evidence was sufficient to convict defendant of violating Miss. Code Ann. § 97-5-

33(6) because the child victim identified defendant and testified that defendant approached him and asked to perform a sexual act upon him, and the mother's testimony of the events related to her by the child and their subsequent actions

was properly admitted as non-hearsay or as a hearsay exception under Miss. R. Evid. 803(1). *Dunn v. State*, — So. 2d —, 2013 Miss. App. LEXIS 181 (Miss. Ct. App. Apr. 16, 2013).

8. Sentence.

Appellant's sentences for the sexual exploitation of a minor in violation of Miss. Code Ann. § 97-5-33(6) and fondling in violation of Miss. Code Ann. § 97-5-23(2)

were within the limits prescribed by the statutes; appellant faced up to eighty-five years in prison, and the circuit court sentenced him to the maximum sentence on all charges but required the sentences to run concurrently, effectively reducing appellant's sentence by forty-five years. *Argol v. State*, — So. 2d —, 2013 Miss. App. LEXIS 143 (Miss. Ct. App. Apr. 2, 2013).

CHAPTER 7

Crimes Against Sovereignty or Administration of Government

§ 97-7-10. Fraudulent statements and representations.

JUDICIAL DECISIONS

1. Evidence.

Defendant's convictions for fraud, in violation of Miss. Code Ann. § 97-7-10(1), were supported by the evidence because defendant, a deputy clerk at a county tax collector's office, admitted to a police officer to changing the addresses for taxing

districts to reduce the fees customers paid for car tags; defendant also admitted to supplying a made-up repair shop listed on a penalty waiver form to enable customers to have their late penalties waived. *Gooden v. State*, 54 So. 3d 298 (Miss. Ct. App. Oct. 5, 2010).

§ 97-7-39. Flags; desecration of national or state flag prohibited.

RESEARCH REFERENCES

ALR. Propriety of Prohibition of Display or Wearing of Confederate Flag. 66 A.L.R.6th 493.

CHAPTER 11

Offenses Involving Public Officials

§ 97-11-29. Embezzlement; accounts to be kept by all public officers; false entries, false certificates, loan of public funds and fraud on the treasury.

JUDICIAL DECISIONS

2. Indictment.

It was error to dismiss defendant's embezzlement indictment under Miss. Code Ann. § 97-11-29 because defendant had eventually paid for the pistol he was

claimed to have embezzled since: (1) the sufficiency of evidence for an indictment could not be challenged before the trial on the merits after the State had presented its case; (2) the State had a right to appeal

under Miss. Code Ann. § 99-35-103(a), and dismissal and remand for retrial were proper; (3) § 99-35-103(b) did not apply because neither side sought a bench trial nor stipulated to the facts, there was no risk that the trial judge would decide defendant's guilt at the hearing, and with-

out risk of a determination of guilt, jeopardy did not attach; and (4) neither an appeal nor further prosecution constituted double jeopardy. *State v. Parkman*, 106 So. 3d 378 (Miss. Ct. App. 2012), writ of certiorari denied by 105 So. 3d 326, 2013 Miss. LEXIS 39 (Miss. 2013).

CHAPTER 17

Crimes Against Property

IN GENERAL

§ 97-17-9. Arson; fourth degree; attempt to burn.

JUDICIAL DECISIONS

1. In general.

Weight of the evidence was sufficient to convict defendant of conspiracy to commit arson in violation of Miss. Code Ann. § 97-1-1 and attempted arson in violation of Miss. Code Ann. § 97-17-9 because an accomplice's testimony that he and defendant entered into an agreement for him to burn the victim's vehicle was uncontradicted; in addition to the testimony of the accomplice was the of other witnesses who provided additional evidence of defendant's animosity towards the victim. *Bradford v. State*, 102 So. 3d 312 (Miss. Ct. App. 2012).

Evidence was sufficient to convict defendant of conspiracy to commit arson in violation of Miss. Code Ann. § 97-1-1 and attempted arson in violation of Miss. Code Ann. § 97-17-9 because the jury could conclude from an accomplice's testimony that he and defendant entered into an agreement for him to burn the victim's vehicle; the accomplice told the same basic story to the police that he told to the jury, and nothing in the record indicated that the accomplice's testimony was unreasonable, inconsistent, or impeached. *Bradford v. State*, 102 So. 3d 312 (Miss. Ct. App. 2012).

§ 97-17-23. Burglary; breaking and entering inhabited dwelling; home invasion.

JUDICIAL DECISIONS

2. Sufficiency of evidence.

Evidence that defendant possessed fruits of a burglary on the same day it occurred, and concealed the true origin of one of the stolen items, was sufficient to support his conviction of burglary in violation of Miss. Code Ann. § 97-17-23(1), *Taylor v. State*, — So. 2d —, 2013 Miss. LEXIS 148 (Miss. Apr. 11, 2013).

Evidence presented at trial was sufficient to support defendant's convictions of aggravated assault (Miss. Code Ann.

§ 97-3-7(2)(a)) and burglary of a dwelling (Miss. Code Ann. § 97-17-23), as it established that he drove two men to pick up a crowbar and then drove them to the victim's house, where they used the crowbar to pry open the door and assault the victim; moreover, his confession established his involvement in the crimes. *Whitaker v. State*, — So. 3d —, 2012 Miss. App. LEXIS 481 (Miss. Ct. App. Aug. 7, 2012).

§ 97-17-41. Grand larceny; second or subsequent offense of felonious taking of motor vehicle; penalties.

JUDICIAL DECISIONS

16. Inference from possession of stolen property.

Evidence that defendant possessed fruits of a burglary on the same day it occurred, and concealed the true origin of

one of the stolen items, was sufficient to support his conviction of grand larceny in violation of Miss. Code Ann. § 97-17-41(1). *Taylor v. State*, — So. 2d —, 2013 Miss. LEXIS 148 (Miss. Apr. 11, 2013).

CHAPTER 19

False Pretenses and Cheats

§ 97-19-5. Citation of Sections 97-19-5 through 97-19-29.

RESEARCH REFERENCES

ALR. Criminal Liability for Unauthorized Use of Credit Card under State Credit Card Statutes. 68 A.L.R.6th 527.

§ 97-19-85. Fraudulent use of identity, Social Security number, credit card or debit card number or other identifying information to obtain thing of value.

RESEARCH REFERENCES

ALR. Criminal Liability for Unauthorized Use of Credit Card under State Credit Card Statutes. 68 A.L.R.6th 527.

CHAPTER 21

Forgery and Counterfeiting

ARTICLE 1.

GENERAL PROVISIONS.

§ 97-21-59. Uttering counterfeit instrument or coin.

JUDICIAL DECISIONS

3. Evidence.

Evidence supported defendant's conviction of uttering forgery because (1) the checks presented to a check cashing business were in defendant's prior possession;

(2) defendant admitted to knowledge and involvement in a check-cashing scheme; and (3) there was no record of an account at a bank belonging to the business that issued the check which defendant actually

cashed, and no evidence that the company 2013 Miss. App. LEXIS 199 (Miss. Ct. even existed. Jones v. State, — So. 2d —, App. Apr. 23, 2013).

CHAPTER 29

Crimes Against Public Morals and Decency

IN GENERAL

§ 97-29-31. Indecent exposure.

RESEARCH REFERENCES

ALR. Validity of State and Municipal Indecent Exposure Statutes and Ordinances. 71 A.L.R.6th 283.

CHAPTER 32

Tobacco Offenses

ARTICLE 1.

MISSISSIPPI JUVENILE TOBACCO ACCESS PREVENTION ACT.

§ 97-32-9. Juvenile purchase, possession and consumption of tobacco.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of State and Local Laws Providing for Civil Liability for Tobacco Sales or Distribution to Minors. 66 A.L.R.6th 315.

CHAPTER 35

Crimes Against Public Peace and Safety

§ 97-35-11. Disturbance by abusive language or indecent exposure; exception.

RESEARCH REFERENCES

ALR. Validity of State and Municipal Indecent Exposure Statutes and Ordinances. 71 A.L.R.6th 283.

CHAPTER 37

Weapons and Explosives

Honesty in Purchasing Firearms Act 97-37-101

GENERAL PROVISIONS

§ 97-37-1. Deadly weapons; carrying while concealed; use or attempt to use; penalties.

JUDICIAL DECISIONS

6. Double jeopardy.

As a conviction of possession of a firearm by a convicted felon (Miss. Code Ann. § 97-37-5) required proof of a prior felony, while conviction of carrying a concealed weapon (Miss. Code Ann. § 97-37-1) required proof that the weapon be con-

cealed, each offense had an element not present in the other; therefore, defendant's conviction of both charges did not violate the double jeopardy ban. *Wilson v. State*, 95 So. 3d 1282 (Miss. Ct. App. 2012).

§ 97-37-5. Unlawful for convicted felon to possess any firearms, or other weapons or devices; penalties; exceptions.

JUDICIAL DECISIONS

6. Sufficient evidence.

9. Double jeopardy.

6. Sufficient evidence.

Trial court did not err in denying defendant's motion for a directed verdict because there was sufficient evidence for a reasonable juror to find defendant guilty of being a convicted felon in possession of a firearm, in violation of Miss. Code Ann. § 97-37-5(1); the State met its burden of proof based on a police officer's testimony, coupled with the fact that the gun was recovered where the officer had seen defendant drop it. *Conner v. State*, 45 So. 3d 300 (Miss. Ct. App. Oct. 5, 2010).

There was sufficient evidence for the jury to convict defendant of being a felon in possession of what it determined was a butcher knife because what type of knife defendant used was a question of fact for

the jury to determine; direct evidence was admitted in the form of eyewitness testimony, the handle of the knife was placed in evidence, and circumstantial evidence was presented as to the length of the blade and its strength. *Thomas v. State*, — So. 3d —, 2012 Miss. App. LEXIS 605 (Miss. Ct. App. Oct. 2, 2012).

9. Double jeopardy.

As a conviction of possession of a firearm by a convicted felon (Miss. Code Ann. § 97-37-5) required proof of a prior felony, while conviction of carrying a concealed weapon (Miss. Code Ann. § 97-37-1) required proof that the weapon be concealed, each offense had an element not present in the other; therefore, defendant's conviction of both charges did not violate the double jeopardy ban. *Wilson v. State*, 95 So. 3d 1282 (Miss. Ct. App. 2012).

HONESTY IN PURCHASING FIREARMS ACT

SEC.

97-37-103. Definition.

§ 97-37-103. Definition.

(1) For purposes of Sections 97-37-101 through 97-37-105:

(a) "Licensed dealer" means a person who is licensed pursuant to 18 USCS, Section 923, to engage in the business of dealing in firearms.

(b) "Private seller" means a person who sells or offers for sale any firearm or ammunition.

(c) "Ammunition" means any cartridge, shell or projectile designed for use in a firearm.

(d) "Materially false information" means information that portrays an illegal transaction as legal or a legal transaction as illegal.

SOURCES: Laws, 2012, ch. 494, § 2, eff from and after July 1, 2012.

Editor's Note — This section is set out to correct an error in the 2012 Cumulative Supplement.

CHAPTER 41

Cruelty to Animals

§ 97-41-1. Living creatures not to be cruelly treated.

RESEARCH REFERENCES

ALR. Challenges to Pre-and Post-Conviction Forfeitures and to Postconviction	Restitution Under Animal Cruelty Statutes. 70 A.L.R.6th 329.
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§ 97-41-11. Fighting animals or cocks.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of Statutes and Ordinances to Pros-	ecution for Cockfighting. 69 A.L.R.6th 207.
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§ 97-41-13. Penalty for violating certain sections.

RESEARCH REFERENCES

ALR. Challenges to Pre- and Post-Conviction Forfeitures and to Postconviction	Restitution Under Animal Cruelty Statutes. 70 A.L.R.6th 329.
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TITLE 99

CRIMINAL PROCEDURE

CHAPTER 3

Arrests

§ 99-3-7. When arrests may be made without warrant.

JUDICIAL DECISIONS

3. Misdemeanor.

Sufficient evidence supported defendant's conviction for misdemeanor domestic violence, pursuant to Miss. Code Ann. § 97-3-7(3), because the 911 dispatcher testified the victim, who was defendant's husband, stated defendant bit him during an altercation, pictures of the victim's injuries were admitted into evidence, and

defendant admitted biting the victim; the husband's decision not to cooperate with the prosecution did not preclude a charge of domestic violence against defendant, pursuant to Miss. Code Ann. § 99-3-7(3)(a). *Anderson v. State*, 102 So. 3d 304 (Miss. Ct. App. 2012), writ of certiorari dismissed by 105 So. 3d 326, 2013 Miss. LEXIS 37 (Miss. 2013).

CHAPTER 15

Pretrial Proceedings

IN GENERAL

§ 99-15-15. Appointment of counsel for indigents.

JUDICIAL DECISIONS

5. Appellate counsel.

Inmate was not entitled to court-appointed counsel at his post-conviction relief evidentiary hearing and appeal under Miss. Code Ann. §§ 99-39-23(1) and 99-

15-15 as the record revealed no need for appointment of counsel for post-trial or appellate proceedings. *Higginbotham v. State*, — So. 3d —, 2012 Miss. App. LEXIS 595 (Miss. Ct. App. Sept. 25, 2012).

§ 99-15-26. Dismissal of action upon successful completion of certain court-imposed conditions.

RESEARCH REFERENCES

ALR. Judicial Expunction of Criminal Record of Convicted Adult in Absence of Authorizing Statute. 68 A.L.R.6th 1.

Judicial Expunction of Criminal Record of Convicted Adult Under Statute — General Principles, and Expunction of Criminal Records Under Statutes Providing for Such Relief Where Criminal Proceeding Is

Terminated in Favor of Defendant, upon Completion of Probation, upon Suspended Sentence, and Where Expungement Relief Predicated upon Type, and Number, of Offenses. 68 A.L.R.6th 1.

Judicial Expunction of Criminal Record of Convicted Adult Under Statute-Expunction Under Statutes Addressing

“First Offenders” and “Innocent Persons,” Where Conviction Was for Minor Drug or Other Offense, Where Indictment Has Not Been Presented Against Accused or Accused Has been Released from Custody,

and Where Court Considered Impact of *Nolle Prosequi*, Partial Dismissal, Pardon, Rehabilitation, and Lesser-Included Offenses. 70 A.L.R.6th 1.

§ 99-15-57. Relief for certain persons who pled guilty within six months prior to the effective date of section 99-15-26.

RESEARCH REFERENCES

ALR. Judicial Expunction of Criminal Record of Convicted Adult in Absence of Authorizing Statute. 68 A.L.R.6th 1.

Judicial Expunction of Criminal Record of Convicted Adult Under Statute — General Principles, and Expunction of Criminal Records Under Statutes Providing for Such Relief Where Criminal Proceeding Is

Terminated in Favor of Defendant, upon Completion of Probation, upon Suspended Sentence, and Where Expungement Relief Predicated upon Type, and Number, of Offenses. 69 A.L.R.6th 1.

Criminal Defendant's Right to Electronic Recordation of Interrogations and Confessions. 69 A.L.R.6th 579.

CHAPTER 17

Trial

§ 99-17-1. Indictments to be tried within 270 days of arraignment.

JUDICIAL DECISIONS

6. Waiver of right.

As defendant did not move to dismiss the charges based on a statutory speedy trial violation until the morning of trial—approximately 595 days after arraignment—his motion was properly dismissed

because he was well outside the 270-day time frame to raise the violation of Miss. Code Ann. § 99-17-1. *Whitaker v. State*, — So. 3d —, 2012 Miss. App. LEXIS 481 (Miss. Ct. App. Aug. 7, 2012).

§ 99-17-9. Trial in the absence of accused.

JUDICIAL DECISIONS

2. Presence of defendant waived.

Defendant's constitutional right to confront his accusers and be present and sentencing were not violated when defendant was convicted and sentenced in absence of felony third-offense domestic violence, Miss. Code Ann. § 97-3-7(3), because defendant voluntarily waived his

sentence at trial and sentencing, pursuant to Miss. Code Ann. § 99-17-9, by willfully failing to attend; defendant spoke with his attorney the morning of trial and indicated he was attending but defendant never showed up. *Robinson v. State*, 66 So. 3d 198 (Miss. Ct. App. June 28, 2011).

CHAPTER 19

Judgment, Sentence, and Execution

IN GENERAL

§ 99-19-21. Sentence; prison terms to run consecutively or concurrently in discretion of court; sentence for felony committed while on parole, probation, earned-release or post-release supervision, or suspended sentence.

JUDICIAL DECISIONS

3.5. Consecutive sentences.

Defendant's 126-year sentence for selling cocaine, methamphetamine, and marijuana was not disproportionate to the crimes because the sentence was statutorily authorized, as (1) Miss. Code Ann. § 41-29-139(b)(1) and (3) permitted maximum sentences of 30 years and 3 years, (2) Miss. Code Ann. § 99-19-81 required a

maximum sentence, as defendant was convicted of a third felony, (3) the doubling of each maximum sentence was authorized by Miss. Code Ann. § 41-29-147, based on defendant's prior drug conviction, and (4) Miss. Code Ann. § 99-19-21 authorized the court to order that the sentences run consecutively. *Mosley v. State*, 104 So. 3d 839 (Miss. 2012).

§ 99-19-53. Execution of death sentence; state executioner.

JUDICIAL DECISIONS

1. Execution protocol.

Mississippi Department of Corrections (MDOC) execution protocol is a "regulation or statement" related only to inmates of the MDOC and is therefore exempt from the provisions of the Mississippi Administrative Procedures Law (MAPL); the protocol is an internal policy concerning lethal injections and the manner in which executions are carried out and is therefore not subject to the notice and comment requirements of the MAPL. *Mississippians Educating for Smart Justice, Inc. v. Miss. Dep't of Corr.*, 98 So. 3d 459 (Miss. 2012).

Execution protocol of the Mississippi Department of Corrections (MDOC) was

exempt from the provisions of the Mississippi Administrative Procedures Law (MAPL) under Miss. Code Ann. § 25-53-102(i)(ii)(6) because it was a "regulation or statement" related only to inmates of the MDOC at a specific facility and did not affect any provision of Miss. Code Ann. § 99-19-55 or alter Miss. Code Ann. § 99-19-51; the protocol was not subject to the notice and comment requirements of the MAPL because it was an internal policy concerning lethal injections and the manner in which executions were carried out. *Mississippians Educating for Smart Justice, Inc. v. Miss. Dep't of Corr.*, 98 So. 3d 459 (Miss. 2012).

§ 99-19-55. Execution of death sentence; procedure; witnesses; certificate of execution; disposition of body.

JUDICIAL DECISIONS

1. Execution protocol.

Mississippi Department of Corrections (MDOC) execution protocol is a “regulation or statement” related only to inmates of the MDOC and is therefore exempt from the provisions of the Mississippi Administrative Procedures Law (MAPL); the protocol is an internal policy concerning lethal injections and the manner in which executions are carried out and is therefore not subject to the notice and comment requirements of the MAPL. *Mississippians Educating for Smart Justice, Inc. v. Miss. Dep’t of Corr.*, 98 So. 3d 459 (Miss. 2012).

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§ 99-19-71. Expunction of misdemeanor conviction of first offender upon petition; expunction of certain felony convictions upon petition.

RESEARCH REFERENCES

ALR. Judicial Expunction of Criminal Record of Convicted Adult in Absence of Authorizing Statute. 68 A.L.R.6th 1.

Judicial Expunction of Criminal Record of Convicted Adult Under Statute — General Principles, and Expunction of Criminal Records Under Statutes Providing for Such Relief Where Criminal Proceeding Is Terminated in Favor of Defendant, upon Completion of Probation, upon Suspended Sentence, and Where Expungement Relief Predicated upon Type, and Number, of Offenses. 69 A.L.R.6th 1.

Judicial Expunction of Criminal Record of Convicted Adult Under Statute-Expunction Under Statutes Addressing “First Offenders” and “Innocent Persons,” Where Conviction Was for Minor Drug or Other Offense, Where Indictment Has Not Been Presented Against Accused or Accused Has been Released from Custody, and Where Court Considered Impact of *Nolle Prosequi*, Partial Dismissal, Pardon, Rehabilitation, and Lesser-Included Offenses. 70 A.L.R.6th 1.

SENTENCING OF HABITUAL CRIMINALS

§ 99-19-81. Sentencing of habitual criminals to maximum term of imprisonment.**JUDICIAL DECISIONS**

15. Sentence not excessive.
 17. Habitual offender sentences.

15. Sentence not excessive.

Defendant's 126-year sentence for selling cocaine, methamphetamine, and marijuana was not disproportionate to the crimes because the sentence was statutorily authorized, as (1) Miss. Code Ann. § 41-29-139(b)(1) and (3) permitted maximum sentences of 30 years and 3 years, (2) Miss. Code Ann. § 99-19-81 required a maximum sentence, as defendant was convicted of a third felony, (3) the doubling of each maximum sentence was authorized by Miss. Code Ann. § 41-29-147, based on defendant's prior drug conviction,

and (4) Miss. Code Ann. § 99-19-21 authorized the court to order that the sentences run consecutively. *Mosley v. State*, 104 So. 3d 839 (Miss. 2012).

17. Habitual offender sentences.

Although an inmate was a candidate for sanctions under Miss. Code Ann. § 47-5-138(3)(a) and (b) for filing successive, frivolous motions for post-conviction relief, such sanctions would have no effect because he had been sentenced as a habitual offender under Miss. Code Ann. § 99-19-81, and thus had no earned time to forfeit. *Clay v. State*, — So. 2d —, 2013 Miss. App. LEXIS 147 (Miss. Ct. App. Apr. 2, 2013).

SEPARATE SENTENCING PROCEEDING TO DETERMINE
PUNISHMENT IN CAPITAL CASES**§ 99-19-101. Intellectual disability.****JUDICIAL DECISIONS****I. UNDER CURRENT LAW.**

- 22.5. Life sentence.

I. UNDER CURRENT LAW.**22.5. Life sentence.**

Miss. Code Ann. § 97-3-21 was not unconstitutionally vague and did not apply to the inmate where the inmate confused parole with conditional release as: (1) Miss. Code Ann. § 47-7-3(1)(f) prohibited parole for an inmate sentenced to life

under Miss. Code Ann. § 99-19-101 for capital offenses; (2) since the inmate pled guilty to murder, carrying a life sentence, he was convicted of an other capital offense under Miss. Code Ann. § 1-3-4; and (3) the inmate was eligible to petition for conditional release at age 65 under Miss. Code Ann. § 47-5-139(1)(a). *Higginbotham v. State*, — So. 3d —, 2012 Miss. App. LEXIS 595 (Miss. Ct. App. Sept. 25, 2012).

CHAPTER 35

Appeals

ARTICLE 3.

APPEALS TO SUPREME COURT AND RELATED PROCEDURES.

§ 99-35-101. Right of appeal.

JUDICIAL DECISIONS

4. Plea of guilty, effect of.

Inmate was not denied his due process rights because he was not advised of his right to appeal to the state's highest court as under Miss. Code Ann. § 99-35-101,

where a defendant entered a plea of guilty and was sentenced, then no appeal from the trial court to the state's highest court was allowed. *Hunt v. State*, 99 So. 3d 269 (Miss. Ct. App. Oct. 16, 2012).

§ 99-35-103. When state or municipality may appeal.

JUDICIAL DECISIONS

2. Judgment quashing indictment, etc.

It was error to dismiss defendant's embezzlement indictment under Miss. Code Ann. § 97-11-29 because defendant had eventually paid for the pistol he was claimed to have embezzled since: (1) the sufficiency of evidence for an indictment could not be challenged before the trial on the merits after the State had presented its case; (2) the State had a right to appeal under Miss. Code Ann. § 99-35-103(a), and dismissal and remand for retrial were

proper; (3) § 99-35-103(b) did not apply because neither side sought a bench trial nor stipulated to the facts, there was no risk that the trial judge would decide defendant's guilt at the hearing, and without risk of a determination of guilt, jeopardy did not attach; and (4) neither an appeal nor further prosecution constituted double jeopardy. *State v. Parkman*, 106 So. 3d 378 (Miss. Ct. App. 2012), writ of certiorari denied by 105 So. 3d 326, 2013 Miss. LEXIS 39 (Miss. 2013).

CHAPTER 39

Post-Conviction Proceedings

ARTICLE 1.

MISSISSIPPI UNIFORM POST-CONVICTION COLLATERAL RELIEF ACT.

§ 99-39-1. Short title.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of State Statutes and Rules Gov-

erning Requests for Postconviction DNA Testing. 72 A.L.R.6th 227.

§ 99-39-5. Grounds for relief; time limitations; “biological evidence” defined.

JUDICIAL DECISIONS

I. UNDER CURRENT LAW.

- 5. Ineffective assistance of counsel.
- 6.5. Newly discovered evidence.
- 8. Timeliness.
- 17.5. Miscellaneous.

I. UNDER CURRENT LAW.

5. Ineffective assistance of counsel.

Defendant’s allegation of ineffective assistance of counsel was without foundation because (1) defendant’s grounds concerned trial strategy, which was within counsel’s discretion, and counsel’s choices were not unreasonable and were sound trial strategy that could only have helped defendant; and (2) defendant failed to demonstrate how any of defendant’s grounds for defendant’s ineffective assistance of counsel claim had a prejudicial effect. Thus, defendant failed to show that defendant was denied a fair trial. *Pittman v. State*, — So. 2d —, 2013 Miss. App. LEXIS 153 (Miss. Ct. App. Apr. 4, 2013).

6.5. Newly discovered evidence.

Defendant’s allegation of newly discovered evidence was without foundation because (1) defendant simply made a new argument as to why defendant believed that the evidence presented at trial by the State of Mississippi was insufficient to sustain defendant’s convictions; (2) defendant failed to explain why the evidence could not have been discovered before the original trial through the exercise of due diligence. *Pittman v. State*, — So. 2d —, 2013 Miss. App. LEXIS 153 (Miss. Ct. App. Apr. 4, 2013).

8. Timeliness.

Inmate’s motion for post-conviction relief was properly summarily dismissed as time-barred under the three-year limitations period of Miss. Code Ann. § 99-39-5(2) since the motion was filed about three years and four months after the entry of his conviction and the inmate did not assert a statutory exemption. *Sims v.*

State, — So. 2d —, 2013 Miss. App. LEXIS 102 (Miss. Ct. App. Mar. 5, 2013).

Defendant’s third petition for habeas corpus relief was properly denied because the trial court lacked jurisdiction to entertain the petition, the petition should have been treated as one for postconviction relief, and defendant’s prior petitions had been denied; in any event, the petition was time-barred by the three-year time period in Miss. Code Ann. § 99-39-5(2). *Dunaway v. State*, — So. 2d —, 2013 Miss. App. LEXIS 182 (Miss. Ct. App. Apr. 16, 2013).

Trial court was not clearly erroneous in its finding that defendant’s petition for post-conviction relief was untimely, under Miss. Code Ann. § 99-39-5(2), as defendant’s claims did not fall within any of the exceptions under § 99-39-5(2). *Moore v. State*, — So. 2d —, 2013 Miss. App. LEXIS 207 (Miss. Ct. App. Apr. 23, 2013).

Defendant’s motion for postconviction relief was properly dismissed because it was untimely under Miss. Code Ann. § 99-39-5(2) and defendant’s sentence was not illegal since it was undeniably less than the 15-year maximum sentence for touching a child for lustful purposes under Miss. Code Ann. § 97-5-23(1). *Desemar v. State*, 99 So. 3d 279 (Miss. Ct. App. Oct. 16, 2012).

17.5. Miscellaneous.

Denial of defendant’s motion for post-conviction relief, in which defendant challenged the revocation of his earned-release supervision (ERS), pursuant to Miss. Code Ann. § 47-5-138(2), was clearly erroneous because defendant was never indicted for the conduct upon which the revocation was based, and at the revocation hearing, the State did not present evidence to prove defendant had violated an ERS rule and did not dispute any evidence that defendant had acted in self-defense. *Morris v. State*, 66 So. 3d 716 (Miss. Ct. App. June 28, 2011).

§ 99-39-7. Filing motion in trial court; filing motion to proceed in trial court with supreme court.

JUDICIAL DECISIONS

6. Jurisdiction.

As an inmate's conviction had been affirmed on direct appeal, the state's high court thereafter denied certiorari review, and the inmate failed to obtain permission from the high court under Miss. Code Ann. § 99-39-7 before filing his motion for post-

conviction relief (PCR), the PCR court lacked jurisdiction to consider it, and the intermediate appellate court lacked jurisdiction to hear his appeal. *Clay v. State*, — So. 2d —, 2013 Miss. App. LEXIS 147 (Miss. Ct. App. Apr. 2, 2013).

§ 99-39-11. Judicial examination of original motion; dismissal; filing answer; court ordered testing of biological evidence.

JUDICIAL DECISIONS

6. Evidentiary hearing.

12. Dismissal.

6. Evidentiary hearing.

Circuit court did not err in failing to grant an evidentiary hearing before dismissing appellant's post-conviction relief motion because appellant's Alford plea was valid, his claims regarding the voluntariness of his confession were waived when he entered his Alford plea, and he failed to make a sufficient showing that his counsel was ineffective or that his sentence was disproportionate. *Argol v. State*, — So. 2d —, 2013 Miss. App. LEXIS 143 (Miss. Ct. App. Apr. 2, 2013).

12. Dismissal.

Dismissal of inmate's motion for post-conviction relief was proper as there was no evidence that the inmate's guilty plea was illegal, involuntary, or coerced and his ineffective assistance claim failed because he did not provide any affidavits to support the claim and he had reaffirmed at his plea hearing that he was satisfied with counsel. *Johnson v. State*, 101 So. 3d 707 (Miss. Ct. App. Oct. 2, 2012).

Summary dismissal of an inmate post-conviction motion under Miss. Code Ann. § 99-39-11(2) without an evidentiary hearing was proper as the trial court re-

viewed the record and determined that the inmate was not entitled to any relief; the dismissal was consistent with the evidence and testimony presented in the record. *Hunt v. State*, 99 So. 3d 269 (Miss. Ct. App. Oct. 16, 2012).

Summary dismissal of a post-conviction motion under Miss. Code Ann. § 99-39-11(2) was proper as the inmate's due process rights were not violated and his guilty plea was knowing, intelligent, and voluntary where: (1) the indictment was not amended, and charged the inmate with possessing more than two grams but less than ten grams of cocaine with the intent to sell under Miss. Code Ann. § 41-29-139(a)(1); (2) the trial court thoroughly advised the inmate of his rights, the nature and elements of the charge against him, and the consequences of his guilty plea; (3) there was a factual basis for the plea under Miss. Unif. Cir. & Cty. R. 8.04(A)(3); (4) the trial court was satisfied that the inmate understood the trial court's explanations, and waived his rights as a criminal defendant; and (5) the trial court was also satisfied with the inmate's and defense counsel's responses as to the inmate's alleged mental illness. *Hunt v. State*, 99 So. 3d 269 (Miss. Ct. App. Oct. 16, 2012).

§ 99-39-19. Evidentiary hearing; summary judgment.

JUDICIAL DECISIONS

1. In general.

Defendant was not entitled to an evidentiary hearing on defendant's motion for post-conviction relief because defendant's claims of newly discovered evidence and ineffective assistance of counsel were without merit. Defendant's alleged newly

discovered evidence would not have exculpated defendant from the charges, while defendant failed to show that defense counsel was ineffective. *Pittman v. State*, — So. 2d —, 2013 Miss. App. LEXIS 153 (Miss. Ct. App. Apr. 4, 2013).

§ 99-39-21. Procedural waiver of objections, defenses, claims; collateral estoppel; res judicata; burden of proof.

JUDICIAL DECISIONS

2. Waiver of objection.

3. Procedural bar.

3. Waiver of objection.

Pursuant to Miss. Code Ann. § 99-39-21(1), (6), defendant was not entitled to postconviction collateral relief because defendant waived the issue of whether the State met its burden to prove the age of the victim, and defendant was unable to show that an error would have changed the result of defendant's conviction *Nix v.*

State, — So. 3d —, 2012 Miss. App. LEXIS 638 (Miss. Ct. App. Oct. 16, 2012).

3. Procedural bar.

Inmate's post-conviction relief (PCR) motion was a successive writ because he alleged the same issues in a prior PCR motion, and any additional arguments he raised in the motion could have been raised at trial or previously on appeal. *Clay v. State*, — So. 2d —, 2013 Miss. App. LEXIS 147 (Miss. Ct. App. Apr. 2, 2013).

§ 99-39-23. Conduct of evidentiary hearing; right to counsel; finality of order as bar to subsequent motions; burden of proof; appointment of postconviction counsel in death penalty cases.

JUDICIAL DECISIONS

6. Right to appointed counsel.

7. Successive writ.

6. Right to appointed counsel.

Inmate was not entitled to court-appointed counsel at his post-conviction relief evidentiary hearing and appeal under Miss. Code Ann. §§ 99-39-23(1) and 99-15-15 as the record revealed no need for appointment of counsel for post-trial or appellate proceedings. *Higginbotham v. State*, — So. 3d —, 2012 Miss. App. LEXIS 595 (Miss. Ct. App. Sept. 25, 2012).

7. Successive writ.

Inmate's post-conviction relief (PCR) motion was a successive writ because he alleged the same issues in a prior PCR motion, and any additional arguments he raised in the motion could have been raised at trial or previously on appeal. *Clay v. State*, — So. 2d —, 2013 Miss. App. LEXIS 147 (Miss. Ct. App. Apr. 2, 2013).

Dismissal of an inmate's post conviction relief (PCR) motion against the State was proper because it was inmate's second PCR motion and thus was an impermis-

sible successive motion under Miss. Code Ann. § 99-39-23(6); the inmate failed to offer any reason that the successive-writ bar should not apply. Further, there was

no merit to the inmate's claims. *Williams v. State*, — So. 2d —, 2013 Miss. App. LEXIS 165 (Miss. Ct. App. Apr. 9, 2013).

§ 99-39-27. Application to Supreme Court for leave to proceed in trial court; grant of relief; dismissal or denial as res judicata.

JUDICIAL DECISIONS

4. Jurisdiction.

As an inmate's conviction had been affirmed on direct appeal, the state's high court thereafter denied certiorari review, and the inmate failed to obtain permission from the high court under Miss. Code Ann. § 99-39-27 before filing his motion for

post-conviction relief (PCR), the PCR court lacked jurisdiction to consider it, and the intermediate appellate court lacked jurisdiction to hear his appeal. *Clay v. State*, — So. 2d —, 2013 Miss. App. LEXIS 147 (Miss. Ct. App. Apr. 2, 2013).

